

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALIAHABADO.A.No. 195/92 connected with
(O.A. 232/87)

B.N.P.Divedi..... Applicant

Versus

Union of India and others. Respondents.

Hon'ble Mr. Justice U.C.Srivastava, V.C.
Hon'ble Mr. K.Obayya, A.M.

(By Mr. Justice U.C.Srivastava, V.C.)

As the pleadings are complete the case is being heard and disposed of finally.

2. The applicant who is said to be holding a civil post of Defence Services at 508 Army Base Workshop, Allahabad in the Corps of E.M.E under Ministry of Defence in the capacity of Upper Division Clerk that is ministerial staff. The applicant has approached this Tribunal with the prayer that the respondents be directed to retain the applicant in the department as upper Division Clerk upto 28.2.94 as he would be completing 60 years service then and the order dated 10.1.1991 so far as the applicant is concerned, be quashed. It was provided that on attaining the age of super-annuation i.e. 58 years the applicant will also retire from service with effect from February, 1992 and the applicant has approached this Tribunal relying on the earlier decision given by this Bench in O.A.No. 232/87 dated 4.11.91. The contention of the applicant is that the applicant being a workmen he is entitled to be retained in service upto the age of 60 years and the rule regarding the age of 58 years will not apply in his case.

3. The learned counsel for the respondents has opposed the application and has contended that

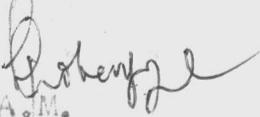
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the applicant is not a workmen and further in view of fundamental rule 56(B) the age of retirement of the applicant is 58 years and not 60 years. In this connection reference has been made to the case of Chandigarh Administration and another Vs. Ajeet Singh A.O.I.R. 1992 Supreme Court 1586 wherein a reference of fundamental rule 56(B) too has been made and it was held that the question of age of an employee for retirement should be 60 years under rule 56(B). The nature of work performed by him should be taken into account and in that case nothing was decided and the case was remanded back to the Tribunal to consider the matter afresh in accordance with law. It appears that the employee in question was an employee of Chandigarh Administration. The Supreme Court took a view that the Tribunal did not consider the status of the employee with reference to the nature of the work performed industrial by him and assumed that all the employees were being/ or work charge establishment qualified as workman within the meaning of clause (B) of fundamental rule 56 so as to give the benefit of retirement on completing the age of 60 years and like other Government employees the age of retirement is 58 years. In the case of S.N.Goswami and 75 others which was decided by this Bench on 4.11.91 a reference of which has been made earlier and S.L.P. against which order is said to have xxxx been dismissed. We have taken a view that the lower Division Clerk/ Office Superintendent/Stenographer etc. in the ministerial staff by virtue of definition of clerical staff also become a workman and as such they are governed by the Factories Act and in this connection reliance on the Supreme Court decision

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in the case of S.N.Satveer Vs. Union of India and others A.I.R. 1981 SC 411 and Navneet Lal Mani Lal Bhatt Vs. Union of India and others A.I.R. 1972 SC 1167 was made in which case though the applicants were held as workman but the subject matter was different. The applicant being workman under the Factories Act and getting benefit under it cannot claim more wages or more facilities which is not admissible to those who cannot claim parity and as such difference in the working hours and posting elsewhere or some reduction in the working hours could not be granted for reducing the working hours as against the fixed working hours. As the applicant is the workman within the meaning of the Factories Act as well as in the above mentioned cases, the applicant will be entitled to the benefit of 60 years age of retirement in view of the provision of fundamental rule 56(b) and accordingly this application is allowed to the extent that the applicant will be allowed to continue in service till attaining the age of 60 years and during this period he will be deemed to be in service; as to what is the emolument how this period is dealt with or in lieu of the emolument to get during this period will be decided by the respondents in accordance with law within a period of 3 months. No order as to the costs.


A.M.


V.C.

Dated: Allahabad
29th Sept., 1992

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