CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

DATED THE 8TH SEPTEMBER, 1994

MR. JUSTICE S.K. DHAON, ACTING CHAIRMAN

MR. JUSTICE B.C. SAKSENA, VICE CHAIRMAN

MR. K. MUTHUKUMAR, MEMBER(A)

ORIGINAL APPLICATION NO. 683 of 1993

M.S. Siddiqui, S/o late Mohd. Yusuf,
Resident of 94/10, Safed Colony,
Juhi, Kanpur. ..... APPLICANT

BY ADVOCATE SHRI R.K. ASTHANA

Vs.

1. Union of India, through General Manager, Small Arms Factory, Kalpi Road, Kanpur.
2. Deputy General Manager, Small Arms Factory, Kalpi Road, Kanpur.
3. Chief Controller of Defence, Accounts Allahabad. ..... RESPONDENTS

BY ADVOCATE SHRI ASHOK MOHILEY

WITH

ORIGINAL APPLICATION NO. 495 of 1993

Nanhe, S/o Khema, r/o 147/3,
Vijai Nagar, Kanpur Nagar ..... APPLICANT

BY ADVOCATE SHRI G.D. MUKHERJEE

Vs.

1. Union of India through General Manager, Small Arms Factory, Kalpi Road, Kanpur
2. Deputy General Manager, Small Arms Factory, Kalpi Road, Kanpur
3. Chief Controller of Defence Accounts Allahabad .... RESPONDENTS

BY ADVOCATE SHRI ASHOK MOHILEY

ORIGINAL APPLICATION NO. 1812 of 1993

Joginder Singh .... APPLICANT

BY ADVOCATE SHRI G.D. MUKHERJEE

Vs.

1. The union of India through the Secretary, Ministry of Defence South Block, New Delhi.
2. The Chief of the Air Staff, Vayu Bhawan, Air Headquarters, New Delhi.
3. The Commanding Officer No.4 B.R.D, Air Force 402 Station, Kanpur-8 ..... RESPONDENTS

BY ADVOCATE SHRI S.C. TRIPATHI

ORDER(ORAL)

JUSTICE S.K. DHAON

A Division Bench of this Tribunal comprising of Hon. Justice

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R.K. Varma, the then Vice Chairman of this Tribunal and Hon'ble Miss Usha Sen, Administrative Member has referred the following question;"whether the Pharmacists in the Ordnance Factory, Kanpur, petitioner in O.A. No. 683 of 1993, Mechanical Draughtsman petitioner in O.A. No. 1612 of 1993 and Civilian Motor Driver Gr.1 (Spl) in Small Arms Factory, Kanpur, the petitioner in O.A No. 495 of 1993 should be regarded as 'workman' within the meaning of the said expression as defined in the Note appended to the Rule C.S.R 459(b). The Bench has been constituted to answer the reference.

Certain employees of the Civilian and Defence Services retired from Service at the age of 58 years. They felt that under the relevant rules they could be retired at the age of 60 years. They, therefore, preferred a number of O.As in this Tribunal. The three petitioners referred to in the referring order were amongst those who preferred the O.As.

The aforesaid O.As were heard together by the Division Bench aforementioned. It appears that the learned Members disagreed on the question as to whether the three petitioners whose cases have been referred to the Larger Bench fall within the ambit of 'workmen' within the meaning of the relevant Rule.

Rule 459(b) the Civil Services Regulations may be extracted.

(a) except as otherwise provided in this article, every government servant shall retire on the day he atta ins the age of 58 years.

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(b) a 'workman' who is governed by these Regulations shall be retained in service till the date 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".

Indisputably, the petitioners before us are governed by the Civil Services Regulations. There is no dispute that the petitioners are employed on a monthly rate of pay. Before the learned Members of the Tribunal probably it was assumed that the petitioners were employed in an industrial establishment. It is nobody's case that the petitioners were employed in a work-charged establishment.

The normal age of retirement of a government servant is fixed at 58 years. An exception has been made in clause (b) in favour of a 'workman'. However, the rule framing Authority has taken good care to clarify as to who should be treated as a 'workman'. The Note in substance, is the usual definition clause in a rule. The expression,'means' as used in the note normally denotes that its scope and ambit is restrictive and therefore the meaning given in it is exhaustive. We have considered the Rule as a whole carefully and we do not find any contrary intention either in its subject or in its context. Since we have taken the view that the note, should be treated as a definition clause, there can be no difficulty in saying that the note is a part and parcel of Rule 459(b).

We are fortified by the decisions of the Supreme Court in the Cases of 'Chandigarh Administration and another Vs. Ajit Singh and another (1993) 23 Administrative Tribunals Cases 349 and Chandigarh Administration

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Vs. Mehar Singh and others (1992) Supreme Court Cases (L&S) 990 wherein it is impliedly held that in order to attract Rule 56(b) of the Fundamental Rule it is necessary for a 'workman' to prove that he was at the relevant time employed either in an industrial or a work-charged establishment.

Reverting to the note, it will be seen that for becoming a 'workman' one has to establish the following:

(a) he is either a highly skilled or skilled or semi-skilled or unskilled Artisan

(b) he is employed on a monthly rate of pay

(c) such an employment is either in an industrial or a work-charged establishment.

For claiming the benefit of Rule 459(b), amongst others, the petitioners are required to establish that they were at the relevant time employed in an industrial establishment. We shall, therefore, examine the case of each of the petitioners in this background.

In O.A. No. 683 of 1993(M.S. Siddiqui Vs. Union of India and Others) the material averments are these: the petitioner is a Pharmacist in the Ordnance Factory, Kanpur. The said factory is an establishment of the Government of India. The nature of the work performed by the petitioner is that of the 'workman' within the meaning of the Factories Act and Rule 56(b) of the Fundamental Rules. (The provisions of Rule 556(b) of the Fundamental Rule and Rule 459(b) of the C.S.R are analogous).

In the Counter affidavit filed on behalf of the respondents the material averments are these: the petitioner is not a 'workman' within the meaning of Factories Act and Rule 56(b) of the Fundamental Rule. The petitioner is a non-industrial group'C' ministerial employee whose service conditions are governed by Indian Ordnance Factories group 'C ' & 'D' non-industrial cadre(Recruitment and

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Condition Service) Rules 1989. Rule 56(b) does not apply to the petitioner.

Annexure IV of the Counter affidavit is a photostat copy of the Rule Ordnance and Ordnance Equipment Factories(Recruitment and Condition Service) Rule 1989. These rules have been framed in the purported exercise of powers under the proviso to Article 309 of the Constitution.

A bare reading of the Rule indicates that in the Ordnance Factory concerned there is a non-industrial establishment. Further more we find a classification of "Civilian in Defence services non-industrial Group 'C'-non ministerial. At sl.No. 57 the expression "Pharmacist" ordinary grade is mentioned.

The sedond supplementary affidavit filed on behalf of the respondents is accompanied by a number of annexures. One of the annexures is a photostat copy of the Govt. of India Gazette (Extra ordinary) dated 6.7.89. The documents filed by the respondents really demonstrate that two sets of rules have been framed by the Competent Authority under Article 309 of the Constitution. One relates to the industrial posts and the other relates to the non-industrial posts. Therefore, the respondents have succeeded in establishing that in the Ordnance Factory concerned there were and there are two distinct establishments namely the industrial establishment and the non-industrial establishment.

In this O.A. no rejoinder affidavit has been filed. We have therefore to proceed on the assumption that the averments in the Counter affidavit and the second supplementary affidavit filed by the respondents are correct. We have also to assume that the annexures appended are also genuine. On the material on record,

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no other finding is possible except that the petitioner has failed to establish that at the relevant time he was employed in an industrial establishment.

The learned counsel for the petitioner has vehemently urged that the conditions of service of the employees in an industrial establishment and the employees in a non-industrial establishment were the same. He has given certain examples such as overtime allowance, hours of duty etc. He has vehemently contended that since the petitioner had been paid productivity linked bonus, the conclusion is inevitable that he was employed in a non-industrial establishment. No such averment, however, has been made in the O.A so as to give a chance to the respondents to rebut this allegation.

Reliance is placed by the learned counsel on a case 'S.N. Goswami and others Vs. Union of India and others(O.A. 232/87) decided on 4.11.91. We have considered this case with due care and we find that the controversy raised there was entirely different from the one before us. The learned Members were not called upon to consider the question as to whether a 'workman' inorder to be entitled to the benefit of Rule 459(b) of the CSR must amongst others, establish that he was at the relevant time employed either in an industrial establishment or in a work-charged establishment. That was the case where really the principle of 'equal pay for equal work' was under consideration. In that connection, the Bench also took into account the fact that the petitioner before it had been paid productivity linked bonus. This case is therefore not apposite.

Shri G.D. Mukherjee next relied upon a decision in the case of 'B.N.P. Dwivedi Vs. Union of India and Ors(O.A. No. 195/92) decided on 29.9.92. This was undoubtedly a case where Rule 56(b) of the

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Fundamental Rule was under consideration. However, it appears that it was nobody's case that the 'workman' concerned was not employed either in an industrial establishment or a work-charged establishment. The argument therefore centered round the question whether the 'workman' before the Tribunal ~~held that he~~ was an 'artisan' within the meaning of the relevant rules. The Tribunal held that he was an 'artisan'. We are informed that a special leave petition has been preferred against the said judgement of this Tribunal and the same has been admitted and the operation of the judgement of the Tribunal has been stayed.

A large number of cases have been cited by the learned counsel. These cases spring from the industrial disputes Act. Since we are of the opinion that they are not relevant, we are not citing them in this order.

O.A. No. 495 of 1993 (Nanhey Vs. Union of India and Ors). This is a case of Motor Driver(civilian). The material averments in the OA are that the petitioner is a Civilian Motor driver (Selection grade) in the Small Arms Factory. The nature of the work performed by him is of a 'workman' as referred to in rule 56(b) of the Fundamental Rule.

In the counter affidavit filed on behalf of the respondents the material averments are substantially the same as in the earlier O.A No. 683 of 1993. To the supplementaty counter affidavit filed a photostat copy of the Ordnance and Ordnance Equipment Factories Rule of Group'C' & 'D' non-industrial posts(Recruitment and conditions of service) Rule 1989 have veen annexed. These rule too has been framed under article 309 of the Constitution. At sl. no. 10 "Civilian Motor driver grade-I (Col)" is mentioned.

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Earlier in column 3 we find the classification of this post as "civilian defence service en non-industrial group'C' non ministerial."

A rejoinder affidavit has been filed by the petitioner. In it he has contented himself by merely reiterating the contents of para 4(h) of the O.A. However, the petitioner has not cared to file a reply to the supplementary counter affidavit. In view of the material on record, we are compelled to record a finding in this case too that the petitioner has been unable to establish that he was at the relevant time employed in an industrial establishment.

In O.A. No. 1812 of 1993, the material averments are these: the petitioner is working as a Mechanical Draughtsman . He is a 'workman' within the meaning of Fundamental Rule 56(b). He is working in an industrial establishment.

A counter affidavit has been filed on behalf of the respondents. Therein, the material averments are these: the petitioner is not working in an industrial,establishment. The Commanding officer No. 4 B.R.D, wherein the petitioner is working, is a Defence Organisation and the post held by him is classified as non-industrial and controlled by the Central Govt.(Air Headquarters). Group 'C' & 'D',industrial civilian employees are treated as non-industrial employees and their age of retirement is 58 years.

On 6.9.94 we passed the following order:

" one of the controversies in this case is whether the applicant worked as a Draughtsman in a non-industrial establishment or not. In the counter affidavit filed on behalf of the respondents, it is stated that even in the Indian Air Force, a classification has been made between the "industrial" and "non-industrial" civilians. However, in support of this assertion, no material has been placed before us for our perusal. As a special case, in view

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of the earnest request made by the learned counsel for the respondents, we stand over the hearing of this case for day after tomorrow so as to enable the learned counsel for the respondents to produce the relevant record. List on 8.9.1994 as P.H."

In obedience to our order some materials have been placed for our perusal. We shall refer to such material, as is relevant. The first is a photostat copy of Notification dated 6.2.1971 whereby the civilian Airforce Units (non-industrial) class III posts(Recruitment Rule 1971 framed under Article 309 of the Constitution have been enforced. This Notification indicates that in the Indian Airforce Units there are non-industrial posts. Then we have a photostat copy of a Notification dated 6.3.72 whereby the Indian Airforce (Draughtsman & Tracers) Recruitment Rule 1971 were enforced. These Rules too have been framed under Article 309 of the Constitution. A perusal of the rules clearly demonstrates the Draughtsman have been separately classified therein and they are treated as Civilian in Defence Services class III non-gazetted, ministerial. We take judicial notice of the fact that in an industrial establishment the existence of a non-ministerial post hardly arises. A combined reading of the aforesaid two documents leads us to the inevitable conclusion that the petitioner was required to prove that he was,at the relevant time, employed in an industrial establishment. This he has failed to do.

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In sum, we come to the conclusion that none of the petitioners have been able to establish or prove the necessary ingredient that they were, at the relevant time, employed in an industrial establishment. Our answer to the reference is as follows:

The petitioners in O.A. No. 683 of 1993, O.A. No. 1812 of 1993 and O.A. No. 495 of 1993 cannot be regarded as "workmen" within the meaning of Rule 459(b) of the CSR Rules.

In view of our aforementioned answer these petitions do not survive and, therefore, we dismiss them. However, there shall be no order as to costs.

A copy of the judgement may be placed on the files of each of the O.As.

Sd/-
(K. MUTHUKUMAR)
MEMBER (A)

Sd/-
(B.C. SAKSENA)
VICE CHAIRMAN

Sd/-
(S.K. DHAON)
ACTING CHAIRMAN

Dated: the Alld, 8th Sept: 1994

U.Verma/

Prepared by. Saxena 22.9.94.

C.T.C.
Mishra
22.9.94

V. K. SRIVASTAVA
Section Officer
Central Administrative Tribunal
ALL.HABAD