

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 492 of 1993

B.P. Srivastava Petitioner

Versus

Union of India and Ors Respondents

Connected with

O.A. No. 502 of 1993

Nand Lal Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 619 of 1993

Roop Chand Petitioner

Versus

Union of India and Ors. Respondents

O.A. No. 621 of 1993

Dev Dutt Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 688 of 1993 1993

R.N. Pandey Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 89 of 1993

Salig Ram Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 868 of 1993

N.P. Tewari Petitioner

Versus

Union of India and Ors Respondents

Ans.

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O.A. No. 877 of 1993

N.A. Tripathi Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 1267 of 1993

V.S. Bhakuni Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 969 of 1993

H.C. Arun Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 684 of 1993

Raja Ram Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 494 of 1993

Sheo Prasad Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 683 of 1993

M.S. Siddiqui Petitioner

Versus

Union of India and Ors Respondents

O.A. No. 495 of 1993

Nanhe Petitioner

Versus

Union of India and Ors Respondents

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O.A. No. 1812 of 1993

J. Singh

.... Petitioner

Versus

Union of India and Ors

.... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MISS, USHA SEN, MEMBER(A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By these petitions, the petitioners who are civilians in Defence services have challenged the orders retiring them at the age of 58 years and have prayed for direction to the respondents to continue them in service till they attain the age of 60 years, or to pay the salary for the intervening period with all other benefits.

2. The petitioners in the various petitions are holding different civil posts in defence services like, Chargeeman Gr.II, Senior Foreman, Supervisor(Fire), Pharmacist, Mechanical Draughtsman, Motor Driver, Office Superintendent, Upper Division Clerk and Lower Division Clerk.

3. The contention of the petitioners is that the petitioner is a workman within the meaning of the Service Rule applicable to them and as such they are liable to be retained in service upto the age of 60 years and the rule regarding the age of retirement as 58 years will not apply in their case.

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4. The respondents have opposed the petition and have contended that none of the petitioners is a Workman. The respondents have mainly drawn support of their contention from the definition of the Workman as provided in the Industrial Disputes Act.

5. It is not disputed that since the salary of the petitioners working on the civil posts in Defence Services is drawn from the defence estimates and not civil estimates and as such C.S.R would apply to them and not Fundamental Rules. The C.S.R 459(b) governing the age of retirement is identically similar to F.R. 56(b) of the Fundamental Rules which is as under:-

* 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 monthly rate of pay in an industrial work-charged establishment."

6. The definition of Workman within the meaning of the clause 459(b) of C.S.R or 56(b) of F.R. is given in the note appended to the clause aforesaid as;

" a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in an Industrial or work-charged establishment."

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7. It is not denied that ~~any~~^{each} of the petitioners in the various petitions was employed on a monthly rate of pay and that he was employed in an industrial establishment like Small Arms Factory, Ordnance Depot, Air Armament, Base Repair Depot, Airforce, Ordnance Clothing factory.

8. In the circumstances the ~~whole~~^{only} test for holding a petitioner as Workman as per the above definition is to find whether the petitioner is an artisan either skilled or unskilled. The word 'artisan' is not defined in the rules and as such we may refer to the various dictionaries for ascertaining its true meaning and import. The meaning is reproduced dictionarywise as under:-

In the Lexicon Webster Dictionary Encyclopedic Edition.

"Artisan" "ar'ti'zən, n (Fr. artisan) (It artigiano) (L. artitianus, ars, artis, art) One skilled in any art or trade; a handicraftsman; mechanic".

In Shorter Oxford English Dictionary on Historical Principles Vol. I

"Artisan" (artizə'n). 1538 (Fr. artisan- It artigiano:- Rom, artitianus, f. L. artitus, pa-pple. of artire instrict in the arts, f. ars, art-ART; See-AL; cf. Partisan)

1. One who practises or cultivates an art; an artist-1795. 2. One occupied in an Industrial art; a mechanic, handicraftsman, artificer 1538-Also fig. Also att rib 1859
2. The meanest e.... contributes more to

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the accommodation of life than the profound scholar JOHNSON.

In BLACK's LAW DICTIONARY with PRONUNCIATION

FIFTH EDITION:-

"Artisan" One skilled in some kind of trade craft, or art requiring manual dexterity ; e.g. a Carpenter, Plumber, tailor, mechanic".

9. The dictionary meaning of the word 'artisan' means to emphasise that an artisan must be a person skilled in some kind of trade, craft or art which requires manual dexterity but the meaning of the word 'Workman' appears to be wider than the import of the word artisan inasmuch as Workman includes by its definition an unskilled artisan as well.

10. The counsel for the petitioner has submitted that the Foreman and Chargeman are persons skilled in Craft requiring manual dexterity and are as such artisans employed in the industrial establishment and accordingly are Workmen within the meaning of the definition of Workman as stated in note appended to C.S.R 459(b)

11. The respondents have contended that the work of a Foreman or Chargeman is supervisory in nature and they do not work as artisan so as to be covered by the definition of Workman as provided in the rule.

12. From the reading of the definition of Workman as understood for the purposes of C.S.R 459(b) it appears to us that a Workman is an artisan employed in industrial establishment to work as an artisan. Therefore, even if

a person like the Foreman or Chargeman may be skilled in craft requiring manual dexterity he may not be a Workman if he is not employed to work as an artisan and is given only the supervisory duty.

13. It is also contended by the learned counsel for the respondents that the Section Officer doing supervisory work and Upper division Clerk and Lower division clerk doing the Clerical work are also not artisans and as such they are not Workman within the definition of the Rule CSR 459(b) so as to be entitled to be retained in service till the age of 60 years. The Pharmacist, Mechanical Draughtsman and Motor drivers are also not admitted to be Workman as it is urged that they are also not artisans.

14. The learned counsel for the petitioner has submitted that the definition of 'Workman' as provided in the Industrial Disputes Act shall be applicable for understanding the meaning of the word 'Workman' used in the service Rule CSR 459(b), since the petitioners are employed in an industry within the meaning of the word 'Industry' as defined in the Industrial Disputes Act. Accordingly, it has been contended by the learned counsel for the petitioners that a Workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, Clerical or supervisory work for hire or reward, except a person who is employed mainly in the managerial or administrative capacity or who ^{being} ~~is~~ employed in a supervisory capacity draws wages exceeding Rs. 1600/- per mensem.

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15. We do not agree with the above submission of the learned counsel for the petitioner, since in our opinion it is not necessary to go into the definition of 'Workman' as provided in the Industrial Disputes Act for understanding the meaning of the word 'Workman' used in the Service Rules i.e. C.S.R 459(b) or F.R. 56(b) when the note appended thereto itself states what a Workman means for the purposes of the said rule. Moreover, the provisions of the Industrial Disputes Act 1947 including the provision of definitions therein are made with the object to provide a machinery and procedure for the investigation and settlement of the Industrial Dispute and for certain other purposes appearing in that Act and those provisions cannot be stretched to extend to a situation where decision is invited in regard to the determination of age of retirement for which specific service rule CSR 459(b) or F.R.56(b) has been made and the use of the word 'Workman' therein has been given a specific meaning in the note appended thereto.

16. From the aforesaid discussion it is clear that according to service Rule 459(b) or F.R. 56(b) the benefit of retirement at the age of 60 years can be claimed only by a Workman i.e. to say an artisan employed in an Industrial Establishment. The 'artisan' according to the dictionary, appears to be a person skilled in any trade, craft, art requiring manual dexterity ^{for} e.g. a carpenter, plumber, tailor, mechanic, handicraftsman etc. The nature of duty of a person who is employed as an 'artisan' must predominantly

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require manual dexterity in the trade, art or craft in which he is skilled or trained. In case the nature of duty of an employee is predominantly managerial or supervisory he cannot be regarded as an artisan employee and unless one is an artisan employee he cannot be called a Workman so as to be entitled to the benefit of retirement age of 60 years as per CSR 459(b) or F.R. 56(b). Therefore for deciding the question who among the petitioners can be categorised as workman, must be determined with reference to the nature of duty performed by each of them.

17. The petitioners in the various petition have not given details of nature of duties performed by the employees to show that the petitioner in each case was employed on monthly pay in an industrial establishment. However, the employees who are employed as Chargeman Grade II, Senior Foreman, Supervisor(Fire), and Office Superintendent are predominantly concerned with supervisory work and not occupied in work requiring manual dexterity so as to be categorised as artisans whether skilled or unskilled within the meaning of Workman as stated in the Note appended to Service Rule CSR 459(b). As such, the incumbents on the aforesaid posts of Chargeman Grade II, Senior Foreman, Supervisor(Fire) and Office Superintendent cannot be regarded as Workman within the meaning of the Service Rule CSR 459(b) so as to be given the benefit of retirement age of 60 years.

18. Such of the petitioners as have been ~~working in the~~ in the ministerial work as Upper Division Clerk and Lower Division Clerk are also not required in the discharge of the duty to have manual dexterity in the nature of work so as to fall in the category of artisans and consequently

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workman as defined in the note appended to the Service Rule C.S.R 459(b). As such, the clerical staff will also not be covered under the said rule for giving benefit of retirement age of 60 years.

19. A decision of the Central Administrative Tribunal New Delhi in a case of H.S. Sokhi Vs. Director General of Works C.P.W.D and others(1993 A.T.C. pg.45) has been cited by the counsel for the respondents in support of his submission that an employee can be said to be an 'artisan' if the dominant nature of his duties require physical or manual dexterity in the skill and that petitioners are not artisans having regard to the nature of their duties. We are inclined to accept this submission based on the decision in the case of H.S. Sokhi(Supra

20. The learned counsel for the petitioner has relied on a decision of this Bench in the case of B.N.P. Dwivedi Vs Union of India and Ors(O.A. 195/92)decided on 29.9.92. But in that case the Union of India has gone up in appeal in the Supreme Court. A copy of the record of proceedings dated 20.9.93 in S.L.P.No.202 of 1993 from the judgment and order dated 29.9.92 of C.A.T Allahabad in O.A. No. 195/92 has been placed on record which shows special leave granted and pending disposal of the appeal there shall be stay."

21. In O.A. No. 683/93 the petitioner is a Pharmacist employed in the Small Arms Factory at Kanpur and the petitioner in O.A. No. 1812/93 is working as Mechanical Draughtsman (Draftsman) in B.B.D Airforce, Chakeri at Kanpur. The petitioners in these two petitions have not given the details of nature of work being performed by them.

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22. The respondents in the Counter affidavit to the petition of Pharmacist-petitioner have stated that the petitioner was initially appointed as dresser in Ordnance factory, Kanpur w.e.f. 9.10.63 and subsequently was selected as Compounder(qualified) and joined in Small Arms Factory Kanpur w.e.f. 19.9.64 and thereafter he was redesignated as Pharmacist and continued to work in the same grade till his retirement on 31.1.93. From this averment of the respondents it appears that the nature of duty of the petitioner have been as a Compounder requiring skilled manual work. As such, the petitioner Pharmacist must be held to be an artisan within the meaning of the word 'artisan' and accordingly must be regarded as a workman within the definition of the word 'workman' as defined in the note appended to the Rule C.S.R 459(b).

23. In the case of the Draughtsman(Draftsman) petitioner (O.A. No. 1812/93) the respondents have in their counter stated that the petitioner was initially appointed as Photostat Operator w.e.f. 15.5.56 and was subsequently promoted to the post of Tracer w.e.f. 3.8.66 and thereafter he was further promoted to the post of Draughtsman(Draftsman) w.e.f. 27.5.77 and he is presently working as a Mechanical Draughtsman. To ascertain the nature of duty of Draughtsman (Draftsman) it may be relevant to refer to its dictionary meaning which in Random House Dictionary is given as under:-

draughtsman(drafts'man,drafts')n.pl.men

1. One employed in making mechanical drawings, as of machines, structures, etc.
2. one who draws sketches, plans, or designs
3. an artist exceptionally skilled in the

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fundamental of drawing: Picasso is a fine craftsman. 4. one who draws up documents. 5. draughtsman(def. 1). Also draughtsman(def. MAN¹)- draftsmanship',n.

24. From the aforesaid dictionary meaning it is apparent that a Draughtsman(Draftsman) is engaged in drawings which necessarily requires manual dexterity. A draughtsman(Draftsman) is therefore an artisan falling within the definition of workman as given in the note appended to the Rule C.S.R 459(b).

25. In O.A. No. 495/93 the petitioner was working as civilian Motor driver Gr. I (special) in Small Arms factory Kanpur when he was retired on 31.3.93. The nature of work performed by the petitioner-driver necessarily required manual skill and dexterity in art of driving and as such the motor driver employee must be regarded as 'artisan' falling within the definition of 'Workman' as defined in the note appended to the Rule C.S.R 459(b).

26. In view of the decision aforesaid, we hold that the petitioners holding different civil posts in defence services like chargeman Gr. II, senior foreman, Supervisor (Fire), Office Supdt, Upper Division Clerk and Lower Division Clerk, having regard to the nature of duty performed by them, are not covered by the definition of 'Workman' as provided in the note to the Rule C.S.R. 459(b) and as such are not entitled to the benefit of retirement at the age of 60 years. But as regards the petitioners in O.A.

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No. 683/93, O.A. No. 1812/93 and O.A. No. 495/93 who are respectively performing ^{duty as} Pharmacist, Mechanical Draughtsman and civilian motor driver, they must be held as 'artisan' falling within the definition of 'workmen' by reason of the nature of work performed by them.

27. Accordingly, the O.A. No. 683/93, M.S. Siddiqui Vs. Union of India and Ors, O.A. No. 1812/93 J. Singh Vs. Union of India and Ors, O.A. No. 495/93 Nanhe Vs. Union of India and Ors are allowed. The respondents are directed to treat the petitioners in these three cases continuing in service till they attain the age of 60 years ^{and give} _{to} them all monetary benefits of continued service till they attain the age of superannuation i.e. 60 years. The respondents shall take back ^{such} _{the} petitioners of these cases in service who are retired before attaining the age of 60 years.

28. As regards the cases of the other petitioners, the same are liable to be dismissed and are hereby dismissed.

29. There shall, however, be no order as to costs in all these cases.

30. A copy of the judgment shall be placed in each of the cases being disposed by this common judgment.

Sd/-
Member (A)

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Dated: Feb: 1994

Sd/-
Vice Chairman

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31. I think that if we interpret the dictionary definition of the word 'artisan' very literally to mean any type of manual

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works requiring some skill then ~~we~~ may perhaps not be able to arrive at the intended import of this word. By this literal interpretation even a clerk who might be engaged mainly ~~as~~ ^{as} a typist would fall in the category of artisan since he is skilled in working ^{for} on the type-writer for typing. Similarly, nurses, ^{data entry operators} ~~data entry operation~~ ^{truly} operators, 'Typists' etc., (for computers) etc., would become 'artisans' since they are skilled in their respective jobs which are mainly of a manual nature. I doubt whether the import of the word 'artisan' can ~~truly~~ embrace 'nurses', 'data entry operation', 'Typists' etc.,

32. There should be some rational basis for framing the rule 459(b) of C.S.R. and permitting some employees to retire at the age of 60 and others at the age of 58 for, otherwise, it would be violative of Article-14 of the Constitution and become discriminatory. It is observed that in the industrial establishments under the Ministry of Defence with which we are presently dealing, there are two categories of employees ~~mainly~~ viz., 'Industrial' and 'Non Industrial'. There are some differences in the service conditions of these two categories, e.g. the leave entitlements are somewhat different, the encashment of leave for the 'Industrial' employees is only upto 60 days, whereas for 'Non Industrial' it is upto 240 days, etc. Another of the differences is that all 'Industrial' employees retire at the age of ~~at~~ 60 and the 'Non-Industrial' at 58. In other words, it ~~is~~ the 'Industrial' employees who are regarded as 'Workers' by the Govt. for the purposes of Rule 459(b), C.S.R. Apparently, the discrimination in the age of retirement is linked to the different service conditions of the two categories. If an employee has accepted himself as a 'Non Industrial' and never challenged that then he has to be governed fully by the service conditions prescribed for such employees and cannot claim to be allowed the advantageous conditions attached to the 'Industrial'

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employees without attracting or being subjected to its disadvantageous conditions. It is seen that as per the Govt. classification (Annexure SA-3 of the C.A.) all the applicants including 'Draughtsman', 'Civilian Motor Driver' and 'Pharmacist' fall under the category of 'Non-Industrial'. They have thus to be regulated wholly by the service conditions of such employees and cannot claim to superannuate at the age of 60 like the 'Industrial' employees. It would have been a different matter if they had challenged their very classification as 'Non-Industrial' and had claimed to be classified as 'Industrial'. However, that has not been challenged by the applicants nor is it the point under dispute at present.

33. In the light of the thoughts penned down above I do not think that 'Draughtsman', 'Civilian Motor Driver' and 'pharmacist' can be regarded as 'Workmen' for the purposes of Rule 459(b) of CSR and allowed to retire at the age of 60.

In the same ^{view} the other applicants also cannot be so regarded. Thus, the conclusion reached at by me is in accordance with the judgement of the Hon'ble V.C. with regard to my letter.

Dated: Feb 28th, 1994.
March 3rd, 1994

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A.D.

Prepared by: Prashant
2.04.94

C.T.C.
With thanks
V. K. SRIVASTAVA
Section Officer
Central Administrative Tribunal
ALLAHABAD

Regarding reference arising from difference
of opinion recorded in the judgment of this
case.

O.A. No. 492/93 was heard alongwith O.A's
502/93, 619/93, 621/93, 688/93, 89/93, 868/93, 877/93,
1267/93, 969/93, 684/93, 494/93, 683/93, 495/93 & 1812/93
by the Bench consisting of Hon'ble Justice R.K. Varma,
V.C. and Hon'ble Miss Usha Sen, Administrative Member
on 25.1.94 and the judgment was reserved. However, the
judgment was delivered by the Bench consisting of Hon'ble
senior Member Mahadev Singh and Hon. Miss. Usha Sen A.M. on
8.3.94 as Justice Varma was not available on station being
on temporary duty to Lucknow Bench, Lucknow.

In this judgment both the members of the Bench
are of common view regarding petitioners in O.A.Nos
492/93, 502/93, 619/93, 621/93, 688/93, 89/93, 868/93, 877/93,
1267/93, 969/93, 684/93, 495/93 holding different civil posts
in defence services like Chargeman Gr.II, Senior Foreman,
Supervisor(Fire), Office Supdt, Upper Division Clerks and
Lower Division Clerks as having regard to the nature of
duty performed by them, they are not covered by the
definition of Workman as provided in the note appended to
the Rule C.S.R 459(b) and as such are not entitled to the
benefit of retirement at the age of 60 years and dismissed
these petitions. But the Administrative Member of the
Bench has differed in remaining three O.A's i.e. O.A. No.
683/93, 1812/93 and 495/93 wherein the petitioners are
respectively performing the duties of Pharmacist, Mechanical
Draughtsman and Civilian Motor Driver. Justice Varma

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has held petitions falling under these categories as 'artisan' falling within the definition of 'Workman' given in the note to the Rule C.S.R 459(b) by reason of the nature of work performed by them and allowed these petitions, whereas Hon'ble Administrative Member Miss. Usha Sen does not agree with the view taken by the Hon'ble Justice Varma regarding these three petitions and has opined that Pharmacist, Mechanical Draughtsman and Civilian Motor Driver cannot be regarded as 'Workman' for the purpose of Rule 459(b) of CSR so as to allow them the age of superannuation, as 60 years.

The point for reference arising for decision by the Full Bench is as under:-

Whether the Pharmacist in the Ordnance Factory Kanpur, petitioner in O.A. no. 683/93, Mechanical Draughtsman, petitioner in O.A. No. 1812/93 and Civilian Motor Driver Gr. I (Special) in Small Arms Factory Kanpur petitioner in O.A. No. 495/93 should be regarded as Workman within the definition of the word 'Workman' as defined in the note appended to the Rule C.S.R 459(b).

The case for reference to the Full Bench be placed before Hon'ble the Chairman, for constituting a Full Bench for hearing this matter. The matter can also be listed for hearing along with the other matters which are fixed before the Full Bench w.e.f. to

The copy of the ~~judgment~~ judgment may also be sent alongwith this note to the Hon'ble Chairman.

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Member (A)
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Vice Chairman

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27.4.94
R. K. SRIVASTAVA
Section Officer
Central Administrative Tribuna
ALLAHABAD

Prepared by. Shashi
29.4.94