

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA.No. 295/91

:Date of Decision: 28.6.99

Mr.Chagganbhai Jivabhai

:Petitioners

Mr. A.A.Khan

: Advocate for the petitioner(s)

Versus

Union of India & Ors.

: Respondent

Mr.R.M. Vin

: Advocate for the respondent(s)

CORAM

Hon'ble Mr. V. Radhakrishnan

: Member(A)

Hon'ble Mr. P.C.Kannan

: Member(J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

N_o

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Shri Chhaganbhai Jivabhai
Retired Chargeman 'B'
Bhavnagar Workshops,
Western Railway,
Bhavnagar Para.
Residential Address:
Ramji's Wadi
Plot No.35
Bhavnagar Para,
Bhavnagar.

: Applicant

Heirs of the applicant:

- | | |
|-----------------------------|------------|
| 1. Smt.Savitaben Chhaganlal | Widow |
| 2. Shri Mahendra Chhaganlal | Son |
| 3. " Naresh Chhaganlal | Son |
| 4. " Bharat Chhaganlal | Son |
| 5. " Hemant Chhaganlal | ... Son |

Advocate: Mr.A.A.Khan

Versus

1. The Union of India,
Owning and Representing
Western Railway through:
Its General Manager,
Western Railway,
Churchgate, Bombay.
2. The Works Manager,
Bhavnagar Workshop
Western Railway,
Bhavnagar Para

: Respondents

Advocate: Mr.R.M.Vin.

JUDGMENT
OA. NO.295/91

Date 28.6.99

Per: Hon'ble Mr.V.Radhakrishnan

: Member(A)

Heard Mr.A.A.Khan and Mr.R.M.Vin, learned advocates for the
applicant and the respondents respectively.

After the OA was filed, the applicant expired and his legal heirs are brought on record.

In this O.A. the applicant challenges the action of the respondents in retiring him at the age of 58 years and claims that as per Rule 2046 (e) of the Indian Railway Establishment Code Vol. II he ought to have been retired from service at the age of 60 years. He made a representation to the respondents which has not been replied so far. The applicant was originally recruited in the Ex-Bhavnagar State Railways in Class IV service. Later on he was promoted to Class III service from 1.10.52.. The applicant also claims that in the case of one Shri Bachubhai Laxman, the Gujarat High Court allowed him to continue up to the age of 60 years and similarly he should also be given the same treatment.

The respondents have contested the application. Firstly they have stated that prima facie the application is time barred as he retired in 1989 and the application is filed in 1991. They have also stated that even though originally the applicant was recruited in Class IV service he was appointed in Class III service from 1.10.52 and as such he is not entitled for continuing in service up to the age of 58 years. They contend that the Rule 2046 (e) of Indian Railway Establishment Manual is very specific that "Railway servants in class IV service or post prior to 1st December, 1962 were entitled to serve up to the age of sixty years including the new entrants to those categories shall continue to serve up to the age of sixty years." They have also stated that they have not received the representation supposed to have been submitted by the applicant. They have also stated that the case of Shri Bachu Laxman is different as he was continued in Class IV service until his retirement. Accordingly, that case will not apply to his case. Accordingly, they have prayed for rejection of the application.

The applicant has filed rejoinder. He has stated that Mr.M.P.Bhatt and Mr.Jivraj Sardhara who are in Class III category were allowed to continue until the age of 60 years by the Hon'ble High Court of Gujarat . Accordingly, he should also be allowed to continue up to the age of 60 years.

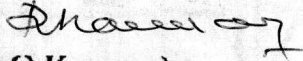
In order to appreciate the case ,Rule 2046 (e) is reproduced below:-

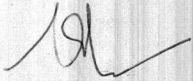
" 2046(e) Railway servants in Class IV service or post who prior to 1st December, 1962, were entitled to serve up to the age of sixty years including the new entrants to those categories shall continue to serve up to the age of sixty years."

It is clearly indicated that a person who entered Government service after 31.3.38 shall retire at the age of 58 years. Railway servants in class IV service recruited prior to 1.12.1962 are entitled to serve upto the age of 60 years including new entrants to those category. Mr.R.M.Vin, learned counsel for the respondents, therefore, points out that being a Class III employee , the applicant is not entitled to continue upto the age of 60 years. He also produces recent High Court of Gujarat decision in SCA/349/82 in Knatilal Odhavji vs. Union of India, wherein it is clearly held that only class IV servants are entitled for continuation of service upto the age of sixty years. In view of the clear law position provided in Rule 2046 (e) that all employees who are recruited after 31.3.38 should retire at the of 58 years, we are inclined to agree with Mr.Vin learned counsel for the

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respondents .We also respectfully agree with the Hon'ble Gujarat High Court judgment (supra).We find that the applicant was superannuated correctly at the age of 58 years. Hence, the OA is devoid of any merit and accordingly, the same is dismissed. No costs.


(P.C.Kannan)
Member(J)


(V.Radhakrishnan)
Member(A)

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