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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 331 of 1992

&

Misc. Application No. 533 of 1992

Date of Decision: 23.9.1993

D.K.Chatterjee

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches
of the Central Administrative Tribunals or not ?

15/1/93

MEMBER (ADMINISTRATIVE)

23 SEP 93

km 23/9/93
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Versus

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Respondent(s)

For the applicant:

M/s.C.M.K.Murty

S.Kr.Rath
Advocates

For the respondents:

Mr.Ashok Mishra
Standing Counsel
(Central Government)

C O R A M:

THE HONOURABLE MR. K.P. ACHARYA, VICE - CHAIRMAN

AND

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act,1985, the petitioner prays to quash the order contained in Annexure-3 giving notice to the petitioner to retire on superannuation with effect from 31.7.1992 on attainment of 58th years.

2. Shortly stated the case of the petitioner is that he was appointed in the C.P.W.D. as Work Mishtri in

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Work-Charged Establishment in the work of construction of Income Tax office building at Guwahati. Subsequently, the petitioner was appointed as an Work Assistant by way of promotion and he worked as such for a very long time; and ultimately was noticed to retire on 31.7.1992. Claim of the petitioner is that he cannot be made to retire on attainment of 58th years, but he should be made to retire on attainment of 60th years.

3. In their counter the opposite parties maintain that the case is devoid of merit and is liable to be dismissed.

4. We have heard Mr.C.M.K.Murty, learned counsel for the petitioner and Mr.Ashok Mishra, learned Standing Counsel appearing for the opposite parties.

5. In order to substantiate the case of the petitioner Mr.Murty submitted that the petitioner should be made to retire on attainment of the age of 60 years, Relying upon a judgment of the Principal Bench forming subject matter of Original Application No.399 of 1986 disposed of on 29.5.1991 in which petitioner Shri Beni Prasad was placed under similarly circumstances like the present petitioner. The Bench observed keeping in view the provisions contained in F.R.Rules 56(a) & 56(b) that the skilled artisans who are in the post of the Work Assistant should be made to retire on attainment of the age of 60th years and not 58th years.

6. Mr.Ashok Mishra, learned Standing Counsel made a serious attempt to distinguish the judgment by saying that the skilled artisanship of the petitioner has ceased
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as he has opted to come to the regular establishment. We are not in agreement with Mr. Ashok Mishra, learned Standing Counsel, because there is no evidence to the above effect and so far as the distinguishing feature is concerned, we cannot close our eyes to the provisions contained under F.R. 56(a) and F.R. 56(b) Fundamental Rules, on which the Principal Bench has placed very ~~strict~~ ^{great} reliance. Therefore we are of opinion that the judgment passed by the Principal Bench (referred to above) applies in full force to the facts of the present case; and therefore, the petitioner should not be made to retire on superannuation with effect from 31.7.1992. The petitioner will be made to retire on superannuation on attainment of the age of 60th years.

7. Further Mr. Ashok Mishra, learned Standing Counsel submitted that the judgment passed in the case of Beni Prasad has been carried in appeal to the Hon'ble Supreme Court by way of filing S.L.P.; and judgment of the Hon'ble Supreme Court should be awaited. There is no evidence produced before us that S.L.P. has been filed before the Hon'ble Supreme Court. In case it has been filed, and judgment is pronounced by the Supreme Court, the same will govern the case of the petitioner.

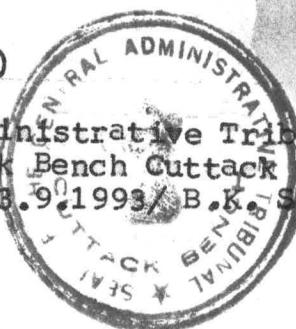
8. Vide order dated 23.7.1992, retirement of the petitioner was stayed and therefore, it is presumed that the petitioner ~~was~~ ^{continued} in service. Vide order dated 31.7.1992, the stay order stood vacated and perhaps the petitioner is out of job since 31.7.1992. Since we have held that the petitioner should be made to retire on superannuation on attainment of 60th years, i.e. on

31.7.1994, the petitioner is deemed to have been in service from 31.7.1992 and he should be reinstated in service forthwith entitling him to all financial benefits which he would have ordinarily drawn from 31.7.1992. The retiral benefits be calculated till his date of superannuation on 31.7.1994 and the retiral benefits already drawn by the petitioner shall be adjusted from his pay to which he would be entitled from 31.7.1992 and if any balance amount remains to be refunded by the petitioner, the same should be deducted from his retiral benefits which he would be entitled to draw on or after 1.8.1994. The amount to which the petitioner will be entitled after adjustment as indicated above should be paid to the petitioner within 120 days from the date of receipt of a copy of this judgment. Thus both the Original Application No.331 of 1992 and Misc.Application No.533 of 1992 are accordingly disposed of leaving the parties to bear their own costs.

1.9.93
MEMBER (ADMINISTRATIVE)

23 SEP 93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 23.9.1993/ B.K. Sahoo



23-9-93
VICE-CHAIRMAN