

7

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 219 OF 1995
Cuttack, this the 9th day of April, 2001

Trinath Biswas

Applicant

Vrs.

Union of India and others ...

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? No.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
9.4.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 219 OF 1995
Cuttack, this the 9th day of April, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Trinath Biswas, aged 58 years, son of late S.C.Biswas,
Ex-Skilled Worker Gr.I, Field Testing Station,
Bhubaneswar, At-Mehendipur Colony, Cuttack-2...

.....

Applicant

Advocates for applicant - M/s Aswini
Kr.Mishra
S.B.Jena
S.K.Das
A.K.Guru
J.Sengupta

Vrs.

1. Union of India, represented through its Secretary,
Ministry of Industry, Department of Industrial
Development, NewDelhi.
2. Director, Regional Testing Laboratory (ER), 111 and
112, B.T.Road, Calcutta-700 035
3. Director, Small Industries Service Institute, Bikas
Sadan College Square, Cuttack.
4. Assistant Director, Field Testing Station,
S/3/52-sector "A", Zone "B", Mancheswar Industrial
Estate, Bhubaneswar

.....

Respondents

Advocate for respondents-Mr.U.B.Mohapatra

ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed
for a direction to the respondents to allow him to
continue in service upto the age of 60 years, i.e., upto
31.1.1997 and also for a direction that he is not due
to be superannuated on 31.1.1995 on reaching 58 years of
age. Respondents have filed counter opposing the prayer
of the applicant. No rejoinder has been filed. We have

9

heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents. The learned counsel for the petitioner has filed a memo asking for 15 days time to file an order of this Bench of the Tribunal. But in spite of two adjournments, no such decision has been filed. A decision of Ernakulam Bench of the Tribunal in the case of P.K.Krishnan Kutty and seven others v. Union of India and others, OA No. 1427 of 1992, decided on 20.12.1992 has been filed and we have perused the same. For the purpose of considering the petition it is not necessary to go into too many facts of this case.

2. The petitioner has stated that he was retired on superannuation on attaining 58 years of age on 31.1.1995. He has stated that in accordance with the provisions of FR 56(b) he is entitled to continue in service till attainment of age of 60 years on 31.1.1997. He has stated that he joined on 16.5.1960 as Turner in Small Industries Service Institute (hereinafter referred to as "SISI") Workshop at Cuttack in the scale of Rs.75-105/- and in due course was promoted to Skilled Worker Grade-I category and was posted in the Field Testing Station at Bhubaneswar. While working as Skilled Worker Grade-I in the Field Testing Station, Bhubaneswar, he was superannuated with effect from 31.1.1995. In the context of the above, the petitioner has come up with the prayers referred to earlier.

S. J. Sam

3. Respondents in their counter have stated that the applicant is not entitled to get the benefit of FR 56(b) and cannot be allowed to retire at the age of 60 years. The applicant is a Central Government employee in Group-C category and is covered under FR 56(a) and is due to retire on attaining the age of 58 years. It is stated that during his entire service career the applicant was never declared as an industrial worker nor did he get the benefits as an industrial worker. Moreover, the organisation in which the applicant was working, i.e., SISI and its Field Testing Station have never been declared as industrial units. It is further stated that SISI and its Regional Testing Centres and Field Testing Stations are rendering technical advice to Small Scale Industrial units located in respective areas. No industrial activity is being carried out in these establishments and therefore, the applicant is not entitled to be retained in service till the age of 60 years. The respondents have made other averments in support of their stand. It is not necessary to record all these averments as these will be considered while dealing with the prayer of the applicant.

4. Before considering the submissions of the learned counsel of both sides, it is necessary to note the provisions of FR 56(b). Under this Rule it is provided that 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. There is a note below the Rule which lays down that in this clause, a workman means a highly skilled, skilled, semi-skilled, or unskilled artisan employed on a

J. Sam

monthly rate of pay in an industrial or work-charged establishment. Hon'ble Supreme Court in the case of Chandigarh Administration and another v. Ajit Singh and another, (1993) 23 ATC 349, and the case of Chandigarh Administration and another v. Mehar Singh and another, 1992 SCC (L&S) 990, have held that to qualify for the benefit under FR 56(b) one must be both a workman or an artisan of some kind, whether skilled, semi-skilled or unskilled, and must have been employed on a monthly rate of pay in an industrial or work-charged establishment. The applicant in this case is a Skilled Grade-I worker in SISI's Field Testing Station at Bhubaneswar. From this it is clear that he is a skilled worker. The applicant has stated that he was originally engaged in the scale of Rs.75-105/-. This has not been denied by the respondents and from this it is clear that he is still enjoying a scale of pay which means that he is in receipt of a monthly rate of pay. Thus, two conditions of FR 56(b) are fulfilled in this case. The controversy in this case is only with regard to the third condition, i.e., whether he is engaged in any work-charged or industrial establishment. It is not the case of the applicant that SISI or its Field Testing Station is a work-charged establishment. Thus, the remaining point for consideration is whether SISI or its Field Testing Station can be taken as an industrial establishment. The respondents have pointed out and this has not been denied by filing a rejoinder that no industrial activity is carried out in the SISI workshop or in its Field Testing Station. They only provide testing and other technical services to the small scale industrial units in

S. Som.

the respective areas. Moreover, the respondents have enclosed with their counter the decision of the Industrial Tribunal of Karnataka in Central Reference No.29 of 1984 (Shri M.Govardana Rao v. The Assistant Director (Admn.), S.I.S.I.) where this point came up for consideration and the Tribunal held in paragraph 22 of the Award that looking at the object of SISI it cannot be said that it is an industry as defined under Section 2(j) of the Industrial Disputes Act. The learned counsel for the petitioner has referred to the decision of the Ernakulam bench of the Tribunal in P.K.Krishnan Kutty's case (supra) where the applicants before them were working as Skilled Workers Grade-I and Grade-II in the Central Workshop, Small Industries Service Institute and its Extension Centres. It was held by the Ernakulam Bench in that case that the applicants before them were entitled to continue in service upto the age of 60 years. While taking that view, the Ernakulam Bench went by their earlier decision dated 17.9.1991 in OA No.544 of 1991. This decision was considered, on a similar point being raised, by the Calcutta Bench of the Tribunal in the case of Nani Gopal Dutta v. Union of India and others, OA No. 492 of 1993, decided on 18.4.1995. Copy of the order of the Calcutta Bench is at Annexure-4. In that decision it was also held that SISI and its Common Facility Service Centre are not industrial establishment. In view of the above and in view of the decision of the Industrial Tribunal, we hold that Central Workshop and Field Testing Stations of SISI are not industrial establishment and therefore, the applicant, even though a skilled worker,

J Sem

is not entitled to the benefit of FR 56(b). The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of All Orissa Electrical Workers Union v. State of Orissa and others, AIR 1997 SC 2397. That relates to the State Government rules and this decision does not provide any support to the case of the applicant.

5. In consideration of all the above, we hold that the O.A. is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
9.4.2001
VICE-CHAIRMAN

CAT/CB/9-4-2001/AN/PS