

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 723 OF 1996

Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

GOPAL CHANDRA BANERJEE

VS

1. Union of India through the General Manager, E.Rly.
17, Netaji Subhas Road,
Calcutta-1
2. The General Manager, E.Rly.
Netaji Subhas Road, Calcutta-1
3. The Chief Personnel Officer,
E.Rly. 17, Netaji Subhas Road,
Calcutta-1
4. The Chief Signal & Telecom Engineer,
E. Rly. 17, Netaji Subhas Road,
Calcutta-1
5. Manager, Signal Workshop,
E.Rly. Howrah.

.... respondents

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Ms. R.Basu, Counsel

Heard on : 12.12.2001 : Order on : 14.12.2001

O R D E R

Per Justice D.N.Chowdhury, V.C.:

The key issue raised in this OA is the legality and validity of the order dated 31.7.1991 by which the applicant was retired from service on attaining the age of 58 years. According to the applicant, since he was working as Machinst, Gr.II (Highly Skilled Artisan) and was a workman, he was to retire on attaining the age of 60 years instead of 58 years.

2. The applicant joined service under the Eastern Railway on the post of Khalasi, a Group D category post, on 7.7.53 in the office of the District Controller of Stores, Howrah. He was subsequently transferred to the Signal Workshop, Howrah on 20.6.57. He was promoted to the post of Machinist, Gr.II (Group C category) post in the scale of Rs. 1200-1800/- (RP) w.e.f. 17.12.86 and hence as per

rules, he was to retire on attaining the age of 58 years and accordingly the impugned order was passed.

3. The learned counsel for the applicant stated and contended before us that the applicant initially joined the railway as a Group D employee and subsequently he was promoted as Machinist, Gr.II which is a skilled artisan post and thus he should be treated as a workman. He relies of FR 56(b) to contend that as the applicant was working as a workman at the time of his retirement, he was entitled to serve till he attained the age of 60 years.

4. The ld. counsel for the respondents, on the other hand, has stated and contended that the applicant being a railway employee is governed by the railway rules and as per rule, a Group C employee of the railway is required to retire on attaining the age of 58 years and hence, there was no illegality in retiring the applicant at the age of 58 years because admittedly he was a Group C employee.

5. To adjudicate the issue it would be appropriate to look to the relevant rules. The age of superannuation under the railways is regulated by rule 1891 of Indian Railway Establishment code (FR 56), which reads as follows :-

" 1891 (FR 56) :- (a) Except as otherwise provided in this Rule, or any other rule or order for the time being in force, every railway servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years.

(b) Railway servant in Group D service or post who, prior to 1st December, 1962 was entitled to serve upto the age of sixty years, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

NOTE 1. - The date on which a Railway servant attains the age of fifty-eight years or sixty years, as the case may be, shall be determined with reference to the date of birth as recorded in terms of rule 225-RI read with administrative instructions thereunder.

NOTE 2. A railway servant whose date of birth is the first of a month, shall retire from service on the afternoon of the last day of the preceding month, on attaining the age of fifty-eight years, as the case may be.

(c) A railway servant to whom clause (a) applies, may be granted extension of service after he attains the age of fifty-eight years, with the sanction of the appropriate authority, if such extension is in the public interest and the grounds therefor are recorded in writing :

Provided that no extension under this clause shall be granted beyond the age of sixty years except in very special circumstances :

Provided further that the appropriate authority shall have the right to terminate the extension of service, before the expiry of such extension by giving a notice in writing of not less than three months in the case of a permanent railway servant, or one month in the case of a temporary railway servant, or pay and allowances in lieu of such notice.

NOTE : - A railway servant who is granted extension of service, after he has attained the prescribed age of superannuation shall not be promoted to another post during the period of extension.

(d) Notwithstanding anything contained in these rules, or any other rule or order for the time being in force, the competent authority may require a railway servant under suspension to continue in service beyond the date of his retirement in which case he shall not be permitted by the authority to retire from service and shall be retained in service till such time as required by that authority. "

6. As per FR 56(a) every government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. As per sub-rule (b) of FR 56, a workman who is governed by these rules shall retire from service on the afternoon of the last date of the month in which he attains the age of sixty years. A note is appended thereto which reads as follows :-

" 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 work-charged establishment."

7. Mr. B.C.Sinha, 1d. counsel appearing for the applicants stated and contended that the applicant was working as a Machinist, Gr.II, which is a Highly Skilled Artisan post and hence he was a workman. therefore, as per FR 56(b) read with the aforesaid note, he was entitled to continue in service till he attained the age of 60 years. The 1d. counse, therefore, contended that the impugned action of the

respondent authorities in retiring the applicant at the age of 58 years was bad and illegal.

8. Ms. R. Basu, 1d. counsel for the respondents submitted that the applicant being a Group C employee of the railway, he was to retire on attaining the age of 58 years and not 60 years. She further contended that since the applicant was a railway employee, he was guided by the relevant rules of the railway and not by the provisions of FR.

9. As already pointed out earlier, rule 1891 of Indian Railway Establishment code regulates the age of retirement of a railway servant and according to this rule, a Group C railway servant is to retire on the last day of the month in which he attains the age of 58 years. Clause (b) thereof is an exception clause, which inter alia provides that a railway servant in Group D service or post, who, prior to 1st December, 1962, was entitled to serve upto the age of 60 years. Admittedly, thought the applicant entered railway service prior to 1962, but he became a Group C employee in 1986 when he was promoted as a Machinist and ceased to be a Group D employee. Therefore, in our opinion, this clause is also not applicable to the applicant.

10. The whole claim of the applicant to serve upto the age of 60 years is based on FR 56(b) on the ground that he being a workman, he was to retire at the age of 60 years and not at the age of 58 years.

11. In this context it will be useful to refer to the decision of the Hon'ble Supreme Court in the case of State of Orissa -vs- Adwait Charan Mohanty reported in 1995(1) SLR 723. In that case, the Hon'ble Apex Court was considering the respondents therein, who was an artisan workman in Class III post, claimed to serve upto the age of 60 years as per rule 71(a) of Orissa Service Code. The said rule is pari materia with FR 56 (b) and a similar note was also there. The Hon'ble Supreme Court relying on earlier decisions, held that the government employee in class III service shall retire on completion of 58 years of age. Even an artisan workman who was promoted or appointed to class III service be it gazetted or non-gazetted shall retire on completion

of 58 years of age.

The applicant being a railway servant is guided by the rules framed by the Railway authorities and there is no scope to import any other rule. Obviously, the applicant wanted to invoke the provisions of FR 56 in aid of his contention that he is entitled to serve upto the age of 60 years though he is not guided by FR but by the provisions of Indian Railway Establishment Code.

12. For the reasons stated above, we do not find any merit in this OA and accordingly, it is dismissed. No costs.

S. Biswas

(S. BISWAS)

MEMBER(A)

D. N. Chowdhury

VICE CHAIRMAN