

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 543
T. A. No.

1991

DATE OF DECISION 19.11.91

P. Raghupathy Achari Applicant (s)

Mr. C. P. Ravindranath Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt., Deptt. of Industries,
Govt. of India, New Delhi and others

Mr. George Joseph, AGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The short question that arises for consideration in this application is whether the applicant is entitled to continue till he attains the age of sixty years under FR 56 (b).

2. The applicant joined the Ministry of Industry as a Mistry. Later the post was re-designated as Skilled Worker Grade-II. Subsequently on 20.6.1990 he was granted promotion to the post of Skilled Worker Grade-I. On attaining age of 58 he has been retired from service on 30.9.1990. According to the applicant, similarly situated employees of the same establishment are given

the benefit of continuingⁱⁿ the service till they attained sixty years based on Annexure-A and B judgments of this Tribunal and Bangalore Bench. The respondents however refused to apply the principles enunciated in Annexure A judgment and retired the applicant on attaining the age of 58. Since the representation filed by the applicant was rejected, he approached this Tribunal with the following reliefs:

- "(i) To declare that the action of the respondents in retiring the applicant from service on the attainment of 58 years of age is illegal, arbitrary and violative of FR 56 (b) of the Fundamental Rules and the judgment of this Tribunal in O.A. 770/89 and O.A. 554/90
- (ii) To direct the respondents to reinstate the applicant and allow to continue till he attains the age of 60 years.
- (iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

3. Respondents have filed a reply statement opposing the claim of the applicant. They have stated that the applicant is a Skilled Work in Group (C) and the retirement age of Group (C) staff is 58 years and not 60 years. It is also stated that the Extension Centre, Kallai, Kozhikode is not an industrial or work-charged establishment and the centre is not covered under the Factories' Act.

4. We have heard learned counsel for both parties. The learned counsel for the applicant submitted that similar case O.A. 544/91 has been heard and allowed by the same bench recently. The learned counsel for the respondents was not able to distinguish the judgment in O.A. 544/91. In this view of the matter we are satisfied

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that identical issue in respect of ^{similar} ~~xxx~~ establishment has been considered by us in O.A. 544/91 and this Original Application can be disposed of following the judgment in O.A. 544/91.

5. This Tribunal after considering earlier decisions held in O.A. 544/91 as follows:

" So an artisan is a person who not only uses his limbs for the discharge of his official duties, but whose brain and dexterity should also be in readiness to cooperate with or grace the physical activity. In other words an artisan's activities and works for producing the result would vitally depend upon his dexterity, the skill and ease in using the limbs or the expertness and knowledge in that particular act. The readiness in the use or control of the mental power or quickness and skill in managing any complicated affair with the limbs is a relevant aspect in the work of an artisan. Mere mechanical and manual work without any skill, dexterity or mental cooperation would not probably make a worker an artisan as explained in the 'Note' to FR 56 (b)

6. In the instant case the applicant is admittedly working as a Mistry. He has contended that he was working as a workman governed by the Fundamental Rules. He has also submitted Annexure-C representation before his retirement. In the reply statement the respondents have admitted that the applicant was discharging the duties of a skilled worker Grade-I till his retirement. The relevant portion reads as follows:

"It is submitted that the applicant was a skilled worker (G. I) at Small Industries Service Institute Extension Centre, Kallai, Kozhikode, a field unit under this SSSI and who retired from service on 30.9.90 on attaining the age of 58 years."


7. The respondents have not stated as how the benefit of the judgment in O.A. 544/91 are not applicable to the applicant. Under these circumstances we are of the view that

the applicant is also entitled to the benefit of the judgment in O.A. 544/91.

8. In the result we allow this application and declare that the action of the respondents in having allowed to retire the applicant without specifically considering the benefit of the judgment in O.A. 770/89 and O.A. 544/91. to/ the applicant. ⁶

Under these circumstances the applicant's retirement from service on 30.3.90 is illegal. Accordingly, we direct the respondents to take the applicant back in service forthwith and grant him the benefit of FR 56 (b) with all consequential benefits eligible to him according to law as if he is continuing in service without any break for the grant of pensionary benefits. We make it clear that the applicant is not eligible for monthly salary and other financial benefits except pensionary benefit for the period he was out of service from 30.3.1990 till his reinstatement in service pursuant to the direction in this judgment.

9. The application is allowed to the extent indicated above. There will be no order as to costs.


19.11.91
(N. DHARMADAN)
JUDICIAL MEMBER


19.11.91
(S. P. MUKERJI)
VICE CHAIRMAN

knn

21.1.92

SPM&ND

CEP 8752
OA 543/91

none for applicant.
Mr. Shafiq-rg. George Joseph Ocar.

The learned counsel for the respondents wishes to file reply to the CEP. He may do so within two weeks with a copy to the learned counsel for the petitioner.

Let's for further direction on

7.2.92

by Smt

21.1.92

NVK & ND

(15) ~~Mr. CP Ravindranath~~ None for the applicant.
Mr. George Joseph

Learned counsel for the respondents seeks some more time to file reply. Prayer granted. Call on 21.2.92.

7.2.92

21.2.92

SPM&ND

Mr. Ravindranath-for applicant.
Mr. George Joseph

The learned counsel for the petitioner appeared before us and stated that the order of this Tribunal in O.A.543/91 has been complied with and he does not wish to press the C.C.P.8/92. Accordingly the CCP is dismissed as not pressed and the notice discharged.

(N.D HARMADAN)
JUDICIAL MEMBER

(S.P. MUKERJI)
VICE CHAIRMAN

21.2.92

FO issued
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