

(17)

THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

O.A. 255/90

Victor Singh ... Applicant

Vs.

Union of India & others ... Respondents

Hon Mr. Justice U.C Srivastava, V.C.
Hon. Mr. K. Obayya, A.M.

(By Hon.Mr. Justice U.C. Srivastava, V.C.)

By this application, the applicant claims that his age of superannuation was 60 years and he has been wrongly retired at the age of 58 years on 31.8.90. He entered in the Eastern Railway service in the capacity of a substitute cleaner under Loco Foreman, Pratapgarh which was taken over by the Northern Railway. Subsequently, the applicant was promoted as Assistant Superintendent in grade of Rs. 1600-2900 on the basis of seniority cum suitability, with the condition till the finalisation of selection of Assistant Superintendent grade, but the applicant retired before finalisation of his selection. On behalf of the applicant, it has been stated that the Railway Board's Circular dated 18.12.82 provides that a railway servant in Class IV group 'D' services who prior to 1.12.62 are entitled to be in service upto the age of 60 years including the new entrants to those categories shall continue to serve until the last date of the month in which he entered in the service.

As the applicant entered in the service prior to 1962, as such he could not have been retired at the age of 58 years. The respondents have pointed out that the circulars given by the applicant are not applicable. And the applicant's case is covered by Shri Navneetlal Manilal Bhatt Vs. U.O.I. decided by the Supreme Court

(476)

with reference to Rule 2046 R-II and the Railway Board vide letter dated 17.9.76. According to the applicant, he was promoted to the Ministerial post of Clerk and by virtue of Ministerial staff, he has a right to continue in service up to the age of 60 years. As the applicant was appointed on the post of Cleaner in Class IV in 1942, the provisions governing terms and conditions are contained in Indian Railways Establishment Code Vol-II Rule 2046 (FR 56) which provides :

"A ministerial staff who has entered government servants on or after 1st April, 1938 -

(i) ..Not concerned

(ii).... ... shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing and with the sanction of the competent authority and he must not be retained after the age of 60 years, except in very special circumstances. The Ministerial servant has also been defined in Para 17 of Rule 2003 of the Estt. Code Vol-II.

"A railway servant of a subordinate service whose duties are entirely clerical and any other class of servants specially defined as such by a general or special order of a competent authority."

Further, in the Railway Board's

with reference to Rule 2046 R-II and the Railway Board vide letter dated 17.9.76. According to the applicant, he was promoted to the Ministerial post of Clerk and by virtue of Ministerial staff, he has a right to continue in service up to the age of 60 years. As the applicant was appointed on the post of Cleaner in Class IV in 1942, the provisions governing terms and conditions are contained in Indian Railways Establishment Code Vol-II Rule 2046 (FR 56) which provides :

"A ministerial staff who has entered government servants on or after 1st April, 1938 -

(i) ..Not concerned

(ii).... ... shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing and with the sanction of the competent authority and he must not be retained after the age of 60 years, except in very special circumstances. The Ministerial servant has also been defined in Para 17 of Rule 2003 of the Estt. Code Vol-II.

"A railway servant of a subordinate service whose duties are entirely clerical and any other class of servants specially defined as such by a general or special order of a competent authority."

Further, in the Railway Board's Circular, according to the applicant, it has been provided that such persons like the applicant should be retired at the age of 60 years.

Prior to the decision of Navneetlal Manilal Bhatt's case, the case of one Shri A. Pichumani was decided which was followed by Navneetlal Manilal Bhatt's case who was also holding a permanent post in the company from March 31, 1938 in which he was to retire at the age of 60 years under the

(42)

new rule amending Rule 2046 R-II dated 11.1.67 providing a railway servant belonging to the ministerial category, he was entitled to continue in service till he attained the age of 60 years. But in the case of A. Pichumani, the new note to Clause (b) of Rule 2046 R-II substituted on 13-12-67 was applied and he was retired at the age of 58 years. because on 5.12.62, the Railway Board had raised the age of compulsory retirement of railway servants to 58 years, subject to ~~xxxxx~~ restrictions. It was held by the Supreme Court that once the employees of ex-company railways and ex-state railways who have taken up service under the railway administration had been treated alike upto 11 Jan. 1967, it followed that they could not again be classified separately from the other employees of Indian Railway Administration. In this view the new Note to Clause (b) substituted on 23rd Dec. 1967 by the Supreme Court was struck down as discriminatory to the extent that new note required the rules of the Company or the State to have a provision similar to Clause (b) of Rule 2046 R-II. In Navnaetlal Manilal Bhatt's case, a railway employee belonging to BB & C.I. Railway Co. belonged to non-ministerial category was directed to be retired on attaining the age of 55 years. On 5.12.62 the age of retirement of railway servant without any distinction was raised to 58 years. The Supreme Court struck down the said letter dated 26.4.63 as discriminatory on the basis of their judgement in Pichumani's case. It was thereafter the Railway Board issued a letter in 1966 in regard to the retirement age of both non ministerial and ministerial employees :

Ministerial

- (i) "All former provincial Government ex-state and ex-Co. employees who fulfill the conditions prescribed in Clause (b) of Rule 2046 R-II will retire at the age of 60 years irrespective of whether they are governed by the pre-absorption terms and conditions of Indian Government Railway Rules."

(ii) "All other former Provincial Govt.

ex-Company and ex-State employees will retire at the age of 58 years under Clause (a) of Rule 2046 R-II irrespective of whether they are governed by the pre-absorption terms and conditions or by Indian Government Railway Rules.

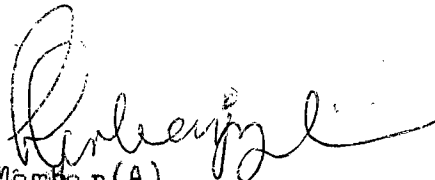
Non Ministerial

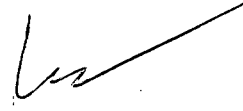
"All former provincial Govt. Ex-Company/ Ex-State Railway employees shall retire at the age of 58 years under clause (a) of Rule 2046 R-II irrespective of whether they have retained the pre-absorption terms and conditions or come over to the Indian Railway Rules.

Now from the above, it is very clear that the applicant is a ministerial employee who should have been retired at the age of 60 years and the respondents have wrongly interpreted the same. When the applicant is in service, the retirement at the age of 60 years in this regard, could not have been curtailed. The respondents have mis-applied and mis-read not only in Navneet Lal Maniia Bhatt's case and accordingly this application is allowed and the respondents ^{to treat} ~~are directed~~ the applicant as entitled to retire at the age of 60 years and accordingly, he should be treated in service up to the age of 60 years and consequential benefits and other benefits arising out of the same may be given to him within a period

(22)

2 months. No order as to be costs.


Member (A)


Vice Chairman

smc

Lucknow
dt.25.6.92