

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~NEW BOMBAY BENCH
CIRCUIT SITTING AT PANAJI GOA

O.A. No.

198

T.A. No. 114/87

DATE OF DECISION 16-12-88Shri Francisco Lourence PetitionerMr. M.G.S. Usgaoncar Advocate for the Petitioner(s)

Versus

Union of India and others. RespondentMr. H.R. Bharne, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT PANAJI GOA

Tr.114/87

Shri Francisco Lourenco,
Bairro Cujira,
Santa-Cruz, Ilhas, Goa.

... Applicant

V/s

1. Union of India
through the Secretary,
Home Affairs,
New Delhi.

2. The Chief Secretary,
Government of Goa,
Panaji,
Goa.

3. The Inspector General of Police,
Panajim Police Headquarters,
Panaji, Goa.

... Respondents.

Coram: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances:

1. Mr. M.G.S.Usgaoncar
Advocate for the
applicant.

2. Mr.H.R.Bharne,
Advocate for the
respondents.

ORAL JUDGMENT

Date: 16-12-1988

(Per M.B.Mujumdar, Member(J)).

The applicant, Shri Francisco Lourenco, had filed Writ Petition No.15/86 in the High Court of Judicature at Bombay, Goa Bench at Panaji on 27-1-1986 and it is transferred to this Tribunal by the High Court by its order dtd. 29-9-1986.

2. The relevant facts for the purpose of this judgment are these: On 4-11-1957 the applicant was appointed as 'Mehanico Chefe' (which on translation means, Chief Mechanic) in the Motor Transport Section at Panaji in the erstwhile Portuguese regime. In his service record his birth date

was recorded as 23-6-1923. On 1-2-1966 he was absorbed and equated to the category of Asstt. Police Inspector. ^{but again} on 1-12-1966 he was absorbed and appointed as Mechanic, Gr.I. He worked as such till his retirement in the Police Garage at Panaji on attaining the age of 58 years on 30th of June, 1981.

3. His case is that under FR 56(b) he should have been retired on attaining the age of 60 years i.e. on 30th June, 1983. Hence he has prayed for directing the respondents to refix his pension from 1-7-1983 by taking into consideration the additional qualifying service of 2 years from 1-7-1981 to 30-6-83. He has also prayed for directing the respondents to grant him all the monetary benefits which would have accrued to him if he was on duty till 30th of June, 1983.

4. The respondents have filed the affidavit of Shri Premanand Vishnu Borkar, Deputy Superintendent of Police at Panaji and resisted the application.

5. We have heard the arguments of Shri M.G.S. Usgaoncar and Shri G.S. Khandeparkar the learned advocates for the applicant and Shri H.R. Bharne the learned advocate for the respondents.

6. The respondents have raised two preliminary objections to the maintainability of this application. The first is that this Tribunal has no jurisdiction as the applicant has retired from service. We find no force in this submission because we are also required to deal with the cases of pensioners. The second objection is that this application is barred by limitation as the applicant has retired on 30-6-1981. We will deal with this ^{objection} ~~application~~ at a later stage. Ph

7. The applicant has based his case on FR 56(b).
The first two clauses of that rule read as below:

✓ Ph

" F.R. 56 (a) Except as otherwise provided in this rule, 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.

(b) 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.

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."

8. Thus according to clause (a) of this Fundamental Rules (for short F.R.) every government servant has to retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. But a concession is given to a workman by clause (b), wherein it is laid down that a workman shall retire on the afternoon of the last day of the month in which he attains the age of sixty years. The note which is part of the F.R. defines the term "workman". According to that note 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.

9. The extent of application of the Fundamental Rules has been detailed in F.R.2 and F.R. 3 which read as below:-

"F.R.2 The Fundamental Rules apply, subject to the provisions of Rule 3 to all Government servants whose pay is debitable to Civil Estimates and to any other class of Government servants to which the President may, by general or special order, declare them to be applicable.

F.R.3 Unless in any case it be otherwise distinctly provided by or under these rules, these rules do not apply to Government servants whose conditions of service are governed by Army or Marine Regulations."

Hence there is no difficulty in holding that the Fundamental Rules do apply to the applicant.

10. In this case the applicant was initially appointed as a Chief Mechanic in the Motor Transport Section of the

Police Department of Panaji in 1957. Since ~~this~~ beginning till his retirement he was working in the Police Garage of the Motor Transport Section at Panaji. Since 1966 he was working as Mechanic Gr.I. Hence there is no difficulty in holding that he was a workman according to the first part of the definition incorporated in F.R.56(b).

11. We shall also have to see as to whether he was employed in an industrial or work-charged establishment. The applicant was no doubt working in the Police Garage of the Motor Transport Section of the Police Department at Panaji. Though it is not a work charged establishment, in our view it is an industrial establishment.

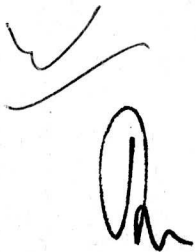
12. In the F.R., neither the term "Industry" nor the term "Industrial establishment" is defined. But these terms are defined in Sections 2(j) and 2(ka) respectively of the Industrial Disputes Act, 1947. Though different High Courts had given different interpretations to the definition of 'Industry' as defined in Section 2(j), the differences are set at rest by the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Others, AIR 1978 SC 548. It is not necessary to quote any portion of that judgment here but it is clear that the Supreme Court has held that even public utility services such as Railways, Telephones, supply of power and water to the public, would be an Industry coming within the ambit of the Industrial Disputes Act and such activity cannot be considered to be sovereign functions merely because rules are framed under Articles 309 and 310 of the Constitution covering the employees in such services.

13. Turning to the written statement of the respondents, they have explained in para 2 that the Police Department at Panaji is having a small garage which is exclusively used to carry on the repairs of the police vehicles. Neither

any manufacturing process is carried out in the garage nor the vehicles of any other departments are being repaired there. It is also not registered under the Factories Act. It is on these grounds that the respondents have submitted that the garage should not be treated as an industrial establishment for the purpose of F.R.56(b). But in view of the judgment in the Bangalore Water Supply and Sewerage Board's case, it is immaterial whether the garage is a small one or whether it is catering to the needs of police vehicles alone. Undisputably the work of repairing motor vehicles is being carried out in that garage. We may point out here that we are told on behalf of the respondents that in all 35 persons are working in the garage. Out of them one is a Mechanic Gr.I, seven are Mechanics Gr.II and 13 are Helpers. Hence we find no difficulty in holding that the garage in which the applicant was working is an industrial establishment. It is true that the garage is not registered under the Factories Act. But registration under the Factories Act is not a requirement laid down in F.R.56(b) and the note under it.

14. We, therefore, hold that the applicant was a Government Servant whose pay is debitable to Civil Estimates and who was serving as a workman in the garage of the Motor Transport section of the Police Department at Panaji and that this garage is an industrial establishment for the purpose of F.R.56(b).

15. Turning to the point of limitation, we may point out that one Shri S.A.Ticro who was serving as Turner Gr.I in Sub-Division IV of Works Division IV of the Public Works Department at Panaji was retired on 31-1-1985 on attaining the age of 58 years. On his representation the Chief Engineer of the Public Works Department of the Govt. of Goa, Daman and Diu passed an order on 10-5-1985



reinstating him with effect from 1-2-1985, as the Govt. had decided that he should be treated as an "Industrial worker" because Sub-Division^{IV}/of Works Division IV in which Shri Ticro was working is covered under the Factories Act. It was thereafter that 13 persons working in the Sub-Division of the P.W.D. filed 13 Writ Petitions in the Goa Bench of the High Court of Judicature at Bombay. All these Writ Petitions were transferred to this Tribunal along with the present writ petition. These writ petitions were numbered as Tr.Application Nos.99/87 to 101/87 and 103/87 to 112/87. It may be pointed out that the applicant in Tr. Application 102/87 expired and that writ petition was not pursued by ^{his} the Legal Representatives.

16. All these transfer applications came up for hearing before the Bench of this Tribunal (comprising of Shri B.C.Gadgil, Vice-Chairman and Shri P.Srinivasan, Administrative Member) on 4-7-1988. Tr.Application Nos.99 to 101 and 103 to 112 were decided by a common judgment delivered on the same day and the following order was passed. -

- "1. The applications Nos.99/87,100/87,101/87, 103/87, 104/87,105/87, 106/87,107/87, 108/87, 109/87,110/87,111/87 and 112/87 are partly allowed.
2. The respondents are directed to refix the pension of all the applicants from the date they attained the age of 60 as if they had continued in service till that date and had earned increments of salary to which they would have been eligible had they so continued in service.
3. We further make it clear that the Pensionary benefits already paid to the applicants till they completed 60 years of age will remain unaffected and the applicants will not be liable to refund them. These orders should be complied with within a period of 4 months from today. Parties to bear their own costs."

We are told by the advocate who appeared for the applicants in the above cases and who appeared in this case also that the order is implemented and the applicants in those case are given the arrears due to them. The order in the present application passed on 4-7-1988 shows that Shri S.B. Kamat, Superintendent from IGP's Office was present on behalf of the respondents before this Tribunal. He prayed for an adjournment stating that the respondents would like to file their reply. Hence this case was adjourned to 9-9-1988 for filing a reply. That is why this case could not be disposed of along with other transferred applications which were disposed of by the Bench on 4-7-1988.

17. The chart prepared by the applicant regarding the applicants whose cases were disposed of by the common judgment on 4-7-88 show that these applicants had retired between 1-1-1979 and 1-5-1984. The judgment shows that the point of limitation was argued before that Bench also. That is why, taking into consideration the facts and circumstances and the arguments advanced by the learned advocate for the respondents, the Bench found that it would be just and equitable to pass an order that the applicants' pension should be calculated as if they had retired at the age of 60, earning all increments that were permissible to them till that date. However, they were not given monetary benefits prior to the attaining the age of 60 years.


18. In view of the judgment delivered on 4-7-1988 we propose to pass a similar order in this case also. Hence we pass the following order:


- (i) The application is partly allowed.
- (ii) The respondents are directed to refix the pension of the applicant from 1-7-83 as if he had continued in service upto 30-6-1983 AN, and had earned the increments to which he would have been entitled had he continued in service till 30-6-1983.

(iii) We make it clear that the pensionary benefits already paid to the applicant till 30-6-1983 will remain unaffected. The applicant will not be liable to refund any such amount.

(iv) The above order shall be complied with and arrears, if any, shall be paid to the applicant within a period of four months from today.

(v) Parties to bear their own costs.


(P.S. CHAUDHURI)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J)