

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(12)

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NEW BOMBAY BENCH

O.A. No. 393 of 1987.
T.A. No. - -

DATE OF DECISION 4-2-1988

Shri K.K.Rajbanshi ~~Petitioner~~ Applicant.

Shri D.V.Gangal ~~Advocate for the~~ Applicant.
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Versus

The Union of India through Respondent
Secretary, Ministry of Defence, New Delhi
and four others.

~~Shri S.R.Atre (for Mr. P.M.Pradhan)~~ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. L.H.A. Rego, Member (A)

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

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

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Original Application No.393/87.

Shri K.K.Rajbanshi,
D-16/2, Salunke Vihar (AWHO),
Pune.

.. Applicant

V/s

1. The Union of India,
through
The Secretary,
Ministry of Defence,
New Delhi.
2. The Secretary,
Ministry of Defence,
New Delhi.
3. Shri M.L.Uppal,
Under Secretary,
Govt. of India,
Ministry of Defence,
Department of Defence,
New Delhi.
4. The Director General,
Defence Estates,
Ministry of Defence,
R.K.Puram,
New Delhi.
5. The Director,
Defence Estates,
HQ. Central Command,
Pune Cantt.

.. Respondents.

Coram: Hon'ble Member (A) Shri L.H.A.Rego.
Hon'ble Member (J) Shri M.B.Mujumdar.

Appearances:

1. Shri D.V.Gangal
Advocate for the
Applicant.
2. Shri S.R.Atre (for
Shri P.M.Pradhan)
Advocate for the
Respondents.

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

Date: 4-2-1988

The applicant has filed this application
under Section 19 of the Administrative Tribunals Act,
1985.

2. In para 8 of the application, the applicant
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has prayed for quashing and setting aside Order No.26(4)/86-D(Lab) dated 12-5-1987. A copy of that order is at Annexure-1 to the application and it reads as follows:

" Whereas the President is of the opinion that it is in the public interest to do so:

NOW THEREFORE in exercise of the powers conferred by clause (h) of Article 459 of the CSRs, the President hereby gives notice to Shri K.K.Rajbanshi, Assistant Director that he having already attained the age of 50 years on 22nd August, 1984 shall retire from service on the forenoon of the day following the date of expiry of three months computed from the date following the date of service of this notice on him".

3. The application was filed on 4-6-1987. On 8-7-1987 we admitted the application and directed the respondents to file their reply. By our order dt.13-8-1987 we stayed implementation of the impugned order dtd. 12-5-1987 till disposal of the application. In view of that application, the applicant is still in service.

4. The impugned order was passed under Article 459(h) of the Civil Service Regulations. The relevant Article which is analogous to FR 56(j), reads as follows:-

"56(j) Notwithstanding anything in this rule, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity, or in a Group 'C' post or service in a substantive capacity, but officiating in a Group 'A' or Group 'B' post or service and had entered Government service before attaining the age of 35 years after he has attained the age of 50 years;

(ii) in any other case after he has attained the age of fifty-five years; "

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5. In our interim order dtd. 13-8-1987 we have pointed out that sub clause(i) of the above Article, does not apply to the facts of this case, because the applicant had admittedly entered Govt. service after attaining the age of 35 years. In this connection we may point out, that the applicant had entered Govt. service on 5-4-1974. Before that he was serving in the Cantonment Fund Service. We do not find any reason to take a different view now.

6. We may point out that the applicant had requested for inspection of some documents. Shri Atre learned advocate for the respondents claimed privilege. We had asked him to file an affidavit today claiming privilege. But as we are able to decide the case on a short point of law we do not find it necessary to decide the question of privilege or of giving inspection.

7. Shri Gangal wanted to argue the case at length. He submitted, that the applicant has attacked the impugned order on the ground of mala fides which are denied by the respondents. He was apprehensive that the respondents may pass a similar order after the applicant attained the age of 55 years. But in that case, the applicant ^{will be} ~~is~~ at liberty to approach this Tribunal if he so desires. In view of this position and especially in view of the fact that the impugned order is patently illegal, we have chosen not to hear Shri Gangal at length.

8. In the result, we quash and set aside the impugned order dtd. 12-5-1987 (which is at Annexure-1 to the application), with no order as to costs.

(L.H.A. REGO) 4.2.88
Member(A)

(M.B. MUJUMDAR)
Member(J)