

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(B)

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NEW BOMBAY BENCH

O.A. No.
T.A. No. 153/86

198

DATE OF DECISION 16-1-1990

Shri R.N. Anaokar Petitioner

Shri V.P. Vaidya for Shri M.A. Dharap Advocate for the Petitioner(s)

Versus

Union of India - The Director, Respondent
All India Institute of Physical Medicine &
Rehabilitation Haji Ali Park, Clerk Road,
Bombay-400-034. Advocate for the Respondent(s)
None for the respondents.

CORAM : Hon'ble Member(J) Shri M.B. Mujumdar

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

The Hon'ble Mr. M.Y. Priolkar, 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? *Yes*
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*

(14)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.A.No.153/86

Shri R.N.Anaokar
96/764, Sidharth Nagar No.1,
16th Road, Goregaon(W),
Bombay-400-062

Applicant

V/s

Union of India
The Director,
All India Institute of
Physical Medicine &
Rehabilitation
Haji Ali Park,
Clerk Road, Bombay-400-034

Respondents.

Appearances:

Shri V.P.Vaidya for
Shri M.A.Dharap,
Advocate for the
applicant.

Coram: Hon'ble Member(J) Shri M.B.Mujumdar
Hon'ble Member(A) Shri M.Y.Priolkar

ORAL JUDGMENT:

Dated 16-1-1990

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

The applicant Shri R.N.Anaokar, was initially appointed as an Electro Plater in the All India Institute of Physical Medicine and Rehabilitation at Mahalaxmi, Bombay which is doing a very laudable work in helping physically handicapped persons. In 1961 the applicant was confirmed as a Junior Metal worker. In 1975 he was promoted as senior metal worker.

2. The applicant has studied upto 5th standard. In the service record, which was prepared after he joined service, 25.11.1924 was recorded as his birth date. According to him, immediately after joining service he realised that his birth date was wrongly recorded. He made oral requests for correcting his birth date from 25.11.1924 to 24.11.1926.

As his oral representations were not heeded he submitted a representation dtd. 23.4.1980 for correcting his birth date.

He attached his own affidavit with his representation.

But by office memorandum dated 20-5-1980 his representation was rejected and he was made to retire on 30.11.1982 while he was working as senior metal worker.

3. Four days before his retirement the applicant had filed Writ Petition No.2674 of 1982 in the High Court of Judicature at Bombay challenging his retirement at the end of November,1982 and for directing the respondents not to retire him till he attains the age of 60 years as per their record.

4. In the petition the applicant has relied on clause (b) of FR 56. The relevant portion of FR 56 reads as under:

"F.R.56.(a) Except as otherwise 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."

(The remaining portion of FR is not quoted as it is not relevant in this case.)

5. It is the case of ^{the} applicant that he was working as a skilled artisan with the respondents which is an industrial establishment and hence he had a right to serve upto 60 years as per clause (b) of FR 56.

6. The respondents have resisted the application by filing their written statement. The applicant has filed rejoinder stating the work and activities which are carried out in the workshop of the respondents. The respondents have not challenged the allegations made in the rejoinder.

7. We have heard Mr.V.P.Vaidya learned advocate for the applicant. None is present for the respondents.

8. After carefully considering the facts of the case we are of the view that the retirement of the applicant on attaining the age of 58 years was illegal and he had a right to serve upto 60 years as per FR 56(b).

9. As per the main provision of FR 56(b), a workman governed by the FRs is to retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. In the note which forms part of the rule the term 'workman' is defined as a highly skilled, skilled, semi-skilled or unskilled artisan on a monthly rate of pay in an industrial or work charged establishment. The applicant was initially appointed as Electro Plater and he was working as senior metal worker at the time of his retirement. He has stated in para 3 of the petition that he was required to do highly skilled work of preparing sockets of metal for fitting the same to disabled persons. He was required to do the work of welding, electro-plating, black-smithy, etc. This is not denied by the respondents. However, in order to see whether FR 56(b) applies to the applicant we shall have to decide whether he was serving in an industrial establishment.

10. The term industrial establishment is not defined in the FRs. However for the sake of guidance we may refer to the definition of that term in the Industrial Disputes Act. Section 25 L(a) defines "Industrial establishment", to mean a factory as defined in clause (m) of Section 2 of the Factories Act, 1948. It also includes a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 and a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951. Coming to Section 2(m) of the Factories Act, that clause defines the term 'factory' as under:

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"2(m)"factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on."

(Clause(ii) and the remaining portion are not relevant.)

Thus if it is found that more than 10 workers are working in the workshop of the respondents and some manufacturing process either with the aid of power or without its aid is carried out in the workshop then it shall have to be held ^{to be} as an industrial establishment.

11. The applicant has filed his rejoinder in affidavit stating the work which is being carried out in the workshop of the respondents. He has pointed out that there are four sections in the workshop of the respondents. They are metal shop, wood shop, shoe making shop and electroplating. There are a number of lathe machines, grinders, drill machines, power hammers, gas welding plants, black smith bhattis, etc. in the workshop. Calipers, Artificial limbs (both of wood, metal and plastic) and special shoes, etc. are manufactured in the workshop for use of handicapped persons. The applicant has today produced a price list of appliances manufactured in the Prosthetic and Orthotic department of the respondents. It shows that about 158 articles and appliances are manufactured in the workshop. Their prices are ranging between Rs. 5/- to Rs. 450/-. In view of this price list and the evidence on record the conclusion is inescapable that the workshop which is being run by the respondent is an industrial establishment.

12. We, therefore, hold that FR 56(b) applies to the facts of this case and the applicant should have been allowed to work till he attained the age of 60 years.

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13. We may point out that though the applicant had made a representation at the fag end of his career for correcting the birth date he has not specifically challenged the rejection of the representation in this petition. Moreover there is nothing to show that the birth date 25.11.1924 which was recorded in his service record after he joined service is not correct. The birth date cannot be corrected only on the basis of an affidavit of the person concerned. Apart from this even the prayers made by the applicant in the petition show that he wants a direction that the respondents should not retire him till he attains the age of 60 years as per their record. The record obviously means the service record of the applicant maintained by the respondents which shows his birth date as 24.11.1924.

14. In result we pass the following order:

(i) It is hereby declared that the respondents were not right in retiring the applicant on 30.11.1982 (AN) and that the applicant had a right to serve with the respondents till 30.11.1984(AN).

(ii) Respondents are hereby directed to give all the consequential benefits due to the applicant in view of the above declaration and on the basis that he was in service upto 30.11.1984(AN), including increments and arrears of pay. The respondents shall refix the pay and pension of the applicant on the above basis and pay the difference in pay and pension to him (without interest) within 4 months from the date of receipt of a copy of this order.

(iii) Parties to bear their own costs.

[Signature]

(M.Y. PRIOLKAR)
MEMBER (A)

[Signature]
(M.B. MUJUMDAR)
MEMBER (J)

Judgment dt. 16.1.90
Send to Parties
on 5.3.90.

Elkohl

Judgment dt. 16.1.90
served on R. No 1
on 7.3.90.

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14.3.90.