

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 336/86.

1. P.D.D'Souza,
Kirkee, Pune-3. Through The Command,
512 Army Base Workshops,
Kirkee, Pune-411 003.

2. C.Lawrence,
Rasne Chawl,
Shivaji Nagar,
Pune-9.

3. D.N.Nimbalkar,
Pune.

4. R.N.Pawar,
Pune. Through The Command,
512 Army Base Workshops,
Kirkee, Pune-411 003.

5. S.K.Londhe,
Pune.

Applicants
(Original Plaintiffs)

V/s

1. Union of India through
The Secretary to the
Govt. of India, Ministry
of Defence, New Delhi.

2. Commandant, 512 Army Base
Workshops, Kirkee, Pune-411 003.

3. Commandant,
CAFVD, Kirkee, Pune-3

Respondents
(Original Defendants)

Coram: Hon'ble Vice-Chairman Shri B.C.Gadgil.
Hon'ble Member (A) Shri J.G.Rajadhyaksha.

Appearances

Applicants Nos
1,2 and 5 in person.

Mr.J.D.Desai for
Mr.M.I.Sethna, Counsel
for the Respondents.

JUDGMENT
(Per Shri J.G.Rajadhyaksha)

Dated: 9.2.1988

Regular Civil Suit No. 926/1984 on the file
of the Vth Joint Civil Judge, Senior Division Pune
has been transferred to this Tribunal for decision.

2) There were 5 applicants (Original Plaintiffs)
of whom applicant No.3 Mr.Nimbalkar is reported to have
expired in January, 1987. His legal representatives
have not come on record. The suit so far as he is

concerned therefore abates. Applicant No.4 R.N.Pawar has been permitted to withdraw from the Suit. Thus only applicants Nos 1,2 and 5 are prosecuting this application.

3) Applicants No.1 and 5 were serving in 512, Army Base Workshop, Kirkee, Pune. Applicant No.2 was employed in the CAFVD (Central Armed Fighting Vehicles Depot). The suit was filed by all applicants jointly on 29.5.1984 claiming that they were industrial workmen and, therefore, had the right to continue in service until they completed 60 years of age. The relief that they prayed for was that Respondents (Original Defendants) should be restrained from superannuating them before they reached the age of 60 years. The respondent (Original Defendant No.2) filed the written statement to resist the suit on the ground that original applicants 1, 3, 4 and 5 had been appointed as Industrial Workmen in 1945, 1944, 1948 and 1952 respectively. They were promoted either as Chargemen or Sr.Chargemen in 1976, 1974, 1979 and 1983 respectively. It was averred that on promotion they ceased to be industrial workmen and therefore, they had no right to continue in service as claimed by them until completion of 60 years of age. There is no written statement on behalf of the respondent No.3 in reply to the plaint in so far as applicant No.2 was concerned.

4) The applicants had prayed for interim injunction by their application dt.29th May, 1984 for continuance in service until they reached the age of 60 years. The learned Civil Judge held that applicants had not made out a *prima facie* case for grant of any

injunction and they would not suffer any irreparable loss if such injunction was not granted. He also held that the balance of convenience was in favour of the defendants. He had concluded that there was nothing on record to enable him to hold that the applicants were Scientific/Technical Personnel who could get an extension in service on the basis of a memorandum dt. 30th November, 1962 enabling Government to give extension in service beyond the age of 58 years to Scientific/Technical Personnel.

5) In this background applicants who appeared in person were heard. Applicants Nos 1 and 5 submitted their written say which is taken on record. Applicant No.2 argued his case personally, stating that Supervisors should be considered as Technicians and continued in service till the age of 60 years. Applicant No. 2 also produced xerox copy of an Appendix to CPRO 108 ~~70~~

dated 26th Aug. 1970 contending that he had objected to working under Leading Hands who were non-industrial personnel as he himself was an Industrial personnel and a Technician. He also produced xerox copy of a ruling of the Orissa High Court in the case of Management of Shri Durga Glass Works v/s Hazari Raut and Anr. In that case an employee was appointed as a mechanic to maintain and repair air-conditioning plants and was later promoted and confirmed as a Supervisor but continuing to attend to the same task viz. maintenance and repairs. The Labour Court treated him as a workman. The High Court also endorsed the view of the Labour Court and dismissed the Writ Petition. Relying on a Supreme Court decision in Burma Shell etc. (1971 (22)

SLR 11) as well as 1964 (8) SLR 128. These were matters under the Industrial Disputes Act. This only shows that irrespective of elevation to a Supervisory post the nature of actual work done determines the category of a workman as industrial or otherwise. Applicant No.2 also brought to our notice an Office Memorandum issued by the Ministry of Defence, Department of Research and Development about enhancement of age of superannuation of Scientific and Technical Personnel of the DRDO (i.e. Defence Research & Development Organisation) In short, therefore, the three applicants before us pressed for holding that they should have been in service upto the age of 60 and should get monetary benefits, accordingly.

6) Mr.J.D.Desai (for Mr.M.I.Sethna) learned advocate for the respondents argued that promotion as Chargeman or Senior Chargeman put the applicants into non-industrial category, they were given written intimation of such promotions and consequences that would follow. They had accepted the promotion and shown their willingness to take the consequences. Thus by implication they had consented to be non-industrial workmen. He adds that their jobs were essentially supervisory and they were not actual workmen. It was explained to us that one Sr.Chargeman supervises 4 Chargemen and each Chargeman may supervise upto 12 workmen. The Army Base workshop authorities gave to us service particulars of the applicants Nos 1,3,4 and 5. As also intimations given to the applicants about their superannuation and decision of the Army Headquarters that the age of superannuation of Technical Supervisory Staff in the Corps of EME (Electrical & Mechanical Engineers) could not be enhanced from 58 to 60 years.

The birth dates of the applicants are as follows:

Applicant No.1	1.7.1926
Applicant No.2	8.5.1926
Applicant No.5	15.9.1926

The dates of their promotion as Chargemen and/or Sr.Chargemen were as follows:

Applicant No.1	1976 and 1982
Applicant No.2	1976
Applicant No.5	1983

7) Though service particulars of applicant No.2 have not been given to us by respondent No.3, from the averments in the plaint itself and the application for interim relief, it is clear that admittedly he was a Sr.Chargeman w.e.f. 1.8.1976.

8) After hearing the applicants and the learned advocate for the respondents, we are of the view that the applicants who started as industrial workmen in terms of C.S.R.459 (b) ceased to be industrial workmen on their promotion to Supervisory posts of Chargemen/ Sr.Chargemen. They cannot, therefore, be governed by the said C.S.R. any more. Therefore, we hold that their superannuation on completion of the age of 58 years was legal and proper. None of the authorities cited by applicant No.2 helps these applicants. The application is, therefore, liable to be dismissed.

9) The application i.e. Original Civil Suit No.962/84 on the file of the 5th Joint Civil Judge, Sr.Division, Pune is dismissed. The parties to bear their own costs.

B.C.Gadgil
(B.C.GADGIL)
VICE-CHAIRMAN

(J.G.RajadhyaKsha)
(J.G.RAJADHYAKSHA)
MEMBER (A)