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(A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 40/91  
Transfer Application No.

Date of Decision : 12.6.95

Bhausingh Bhiko Nikam

Petitioner

Shri A.G. Abhayankar

Advocate for the  
Petitioners

Versus

Union of India and others.

Respondents

Shri Suresh Kumar for  
Shri M.I. Sethna

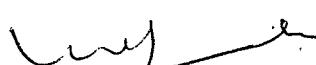
Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman  
The Hon'ble Shri M.R. Kelhatkar, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal? (M.S. Deshpande)

  
(M.S. Deshpande)  
Vice Chairman

(PW)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 40/91

Bhausingh Bhiko Nikam

... Applicant.

V/s.

Union of India  
Represented by the  
Secretary,  
Department of Science &  
Technology,  
Technology Bhawan,  
New Delhi.

The Director General  
of Meteorology,  
Mausam Bhawan,  
Lodhi Road,  
New Delhi.

Deputy Director General  
of Meteorology,  
Pune Observatory,  
Shivaji Nagar,  
Pune.

... Respondents.

CORAM: Hon'ble Shri Justice M.S.Deshpande, Vice Chairman  
Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri A.G. Abhyankar, counsel  
for the applicant.

Shri Suresh Kumar for Shri  
M.I. Sethna, counsel  
for the respondents.

ORAL JUDGEMENT

Dated: 12.6.95

( Per Shri M.S. Deshpande, Vice Chairman )

By this application two prayers were  
made. Firstly to declare that the applicant was  
entitled to the promotion as Mechanical Assistant  
(Carpentry) with effect from 1.1.1985 and to fix  
his pay accordingly. Secondly to declare that the  
applicant is entitled to continue in service till  
the time he attains the age of 60 years in his  
present position as Mechanical Assistant (Carpentry).

...2...

The first prayer was not pressed by the learned counsel for the applicant. All that we have to consider is whether by virtue of applicant's getting the position as Mechanical Assistant (Carpentry) at the time of retirement, the retirement age was extended to 60 years. The applicant's contention is that by the order dated 3.7.90 (Annexure B) the applicant was promoted as Mechanical Assistant (Carpentry) for industrial unit in an officiating capacity with immediate effect. In the order it was stated that if the promotee declines promotion for whatever reason, they will be considered for promotion only after completion of one year in accordance with the instructions contained in the Ministry of Home Affairs (Department of Personnel & Administrative Reforms) Office Memorandum No. 22034/3/81-Bst.(D) dated 1.10.81 and failure to accept promotion will also entail the office to take disciplinary action against them for refusing to obey orders, in case, the reasons adduced by them were not acceptable to the appointing authority. The applicant did not agitate for delay in promotion and he made an endorsement while receiving the order dated 3.7.90 that he is receiving the order under protest. There is no dispute that the applicant was retired from the promotional post which was in the Class III industrial category and not in Class IV industrial category. When the matter came up for hearing earlier, we directed the authorities to file an affidavit detailing what are the duties of the Mechanical Assistants in fact and what is the period which is spent in doing Supervisory or

Ministerial duties and the duties of other nature which may be that of a worker. Accordingly both the parties tendered their affidavits. However in view of the decision of the Supreme Court in the case of State of Orissa and Others V/s. Adwait Charan Mohanty 1995(1) SCSLJ 261, the ~~liberty~~<sup>law</sup> which would be applicable to the present case is now settled by that decision. In para 15 it is observed:

" Therefore, we are of the considered view that the government employee in Class III service shall retire on completion of 58 years of age. Even an artisan -workman who was promoted or appointed to Class III service be it gazetted or non-gazetted shall retire on completion of 58 years of age. An Artisan-workman who is working in an industrial or workcharged establishment but he is at par with Class IV employee is to retire on attaining the age of 60 years under the second proviso to Rule 71(a) of the Code which is 'Pari materia' with FR 56. In this view, it is not necessary to decide whether any industrial establishment in a government department, not specified, expressly, is an industry or a factory as contended by the respondents. The Code clearly gives benefit to them. One essential condition to be satisfied is that such an artisan-workman, be it highly-skilled, skilled, semi-skilled or un-skilled, must, of necessity, be on monthly pay of the government."

In the present case though the applicant had made a grievance that he <sup>was</sup> ~~had~~ made to retire early, <sup>but</sup> that is not the relief he has claimed. He has claimed the relief for getting an early date of promotion which has been ~~given~~. In view of what we have stated above, the applicant will not be entitled for any relief. The O.A. is disposed of accordingly.

M.R. Kolhatkar

(M.R. Kolhatkar)  
Member (A)

.....  
(M.S. Deshpande)  
Vice Chairman

NS