

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:- 29 JUL 1994

APPLICATION NUMBER:

776/1993

APPLICANTS:

Sri. U. Vasudera
T.O.

RESPONDENTS:

v/s. Chief Commissioner of Income Tax,
Bangalore and another.

- ① Sri. S. Ganesh Rao, Advocate,
D.No.399, 1st floor, 65¹⁵ cross,
5¹⁵ Block, Rajajinagar,
Bangalore-560010.
2. Sri. M. S. Padmanabhan, Sr. CGSC,
High Court Rd, Bangalore

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 25-07-94

Issued on

29/7/94

R.

ofc

S. Shaukat, 29/7
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

APPLICATION NO. 776/1993

DATED THIS THE TWENTYFIFTH DAY OF JULY, 1994

Mr. Justice P.K. Shyamsunder, Vice Chairman

Mr. T.V. Ramanan, Member (A)

U. Vasudeva
Notice Server
Income Tax Offices
Mangalore - 575 001.

..... Applicant

(By Shri S. Ganesh Rao, Advocate)

Vs.

1. The Chief Commissioner of Income Tax
Karnataka, Central Revenue Buildings
Bangalore - 560 001.

2. The Secretary
Central Board of Direct Taxes
North Block, New Delhi - 110001 Respondents

(By Shri M.S. Padmarajaiah, S.C.G.S.C.)

O R D E R

(Mr. T.V. Ramanan, Member (A))

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant has claimed
the following reliefs:-

- (i) Direct the respondent to extend the retirement age of the applicant to 60 years, instead of 58 years;
- (ii) Direct the respondent to continue the applicant in service till 31-1-1996;
- (iii) Direct the respondent to allow all benefits of salary and allowances till 31-1-1996;
- (iv) To award the cost of litigation;



(v) To pass such other order or relief(s) as deemed fit in the interest of justice and equity.

2. The case of the applicant is that he had joined as a Class IV (now called Group-D) employee in the Income Tax Department in Karnataka on 19.6.1954. Later on, he was promoted as Notice Server in Group-C cadre with effect from 3.10.1968. Once again, he was further promoted as Notice Server (Selection Grade) with effect from 10.1.1984. The present scale of the said post being Rs 825-15-900-EB-20-1200, the applicant contends that although he had been promoted within Group-C from the post of Notice Server to that of Notice Server (Selection Grade) with a higher pay scale, it was not promotion to a higher post but simply an in situ promotion. The Government of India in the Ministry of Finance, Department of Expenditure issued an O.M. No.10(1)/E.III/88 dated 13th September, 1991 making provision for career advancement of Group 'C' and Group 'D' employees. In that a provision was made, inter alia, that Group-D employees who fulfill certain conditions would be considered for promotion *in situ* to the next higher scale and the scale given for such promotion was Rs 825-15-900-EB-20-1200, the same scale of pay in which pay is being drawn by the applicant on his promotion as Notice Server (Selection Grade) but within the Group-C category. Citing clause (d) of para-2 of the aforesaid O.M., the applicant claims that but for his promotion as Notice Server in Group-C from Group-D, he would have been drawing pay in the pay scale of Rs 825-15-900-EB-20-1200 and in that event the applicant would have been eligible to retire at the age of 60 instead of at 58 years, which is the date of retirement for Group-C employees. The said clause (d) of para-2 of the O.M. reads as follows:

"(d) Group 'D' employees will retain the benefit of retirement at 60 years even after they are promoted in situ to the scale of Rs 825-15-900-EB-20-1200. On promotion in situ to any higher group 'C' scale, the retirement age of 58 will apply. "

The applicant had made a representation as at Annexure-A1 to Respondent (R for short) no.1 on 7.6.1993 for his being continued in his post upto the age of 60 years. However, the same was rejected by R-1 by his letter dated 2.7.1993 (Annexure-A2) addressed to the Assistant Commissioner of Income Tax, Investigation Circle-1, Mangalore. The said letter reads as follows:

"Sub: Request of Sri U. Vasudeva for extension of service beyond 58 years of age - regarding.

The request of Shri U. Vasudeva, Notice Server, Income-tax office, Mangalore, made in his letter dated 7.6.1993 for extension of his service beyond the age of superannuation, i.e., 58 years, has been duly considered by the Chief Commissioner of Income Tax, Bangalore, and it is regretted that the same cannot be acceded to. Shri U. Vasudeva is presently holding the post of Notice Server which has been classified as Group 'C' and he stand retired on attaining the age of 58 years as per FR 56(a). The official has claimed extension basing on the instructions contained in the Dept. of Expenditure's O.M. No.10(1)/E.III/88 dated 13-9-1991 which is not applicable in his case as the instructions contained therein are applicable only in respect of promotions made under in situ scheme. This may be brought to the notice of the individual. "

Aggrieved by the rejection of his request, the applicant has approached this Tribunal in this application.

3. The respondents in their reply have denied the claim of the applicant for being retained in services until he attains the age of 60 years by stating that having got into the Group-C category by promotion on a regular basis with effect from 3.10.1968, the applicant cannot now claim the benefit of



retirement at the age of 60 which is applicable to Group-D employees under FR 56 (a). They have averred that the applicant is governed by FR 56(a) and as such his age of retirement would be 58 years.

4. We have heard the learned counsel for the applicant as also the learned Senior Central Government Standing Counsel for the respondents.

5. In support of the claim made by the applicant, the learned counsel for the applicant has cited the decisions given by the Central Administrative Tribunal, Principal Bench, New Delhi, in Shri Jai Ram Lal Vs. Union of India and Ors. reported in 1992 (3) SLJ (CAT) 1 and by the Central Administrative Tribunal, Ernakulam Bench, in P. Vasudevan and Another Vs. Union of India and Others reported in 1992 (2) SLJ (CAT) 192. We are of the view that both the decisions of the CAT do not apply to the case of the applicant for the reasons given in the following paragraphs.

6. FR 56(a) & (b) read as follows:

"FR 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.

From a perusal of the provisions reproduced above, it is amply clear that normally every Government servant shall retire from service after completion of 58 years of age. However,

a workman, i.e., a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in an industrial or work-charged establishment governed by the fundamental rules shall retire from service after he attains the age of 60 years. The applicant, who, we are told, has since retired on 31.1.1994 (a.n.) on attaining the age of 58 years, was a Notice Server working in the office of the Income Tax Officer, Investigation Circle-1, Mangalore, and it is not disputed by either side that this office is neither an industrial establishment nor a work-charged establishment. As such, *prima facie*, he cannot get the benefit of retirement after completing the age of 60 years under FR 56(b). FR 56 (e) makes a provision that a Government servant in Class IV (now Group-D) service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. The applicant not being a Group-D employee cannot therefore, seek any benefit under this clause of FR 56. Having accepted a promotion and gained entry to Group-C, when the going was good and when the pay scale of the post of Notice Server in that Group was certainly higher he cannot now claim parity with Group-D employees only in order to secure the benefit of retirement at the age of 60. The attempt made by the learned counsel for the applicant, in the course of arguments, that FR 56(b) should apply in the case of the applicant as he functioned as a workman must also fail. It is significant to mention that this point has not been urged either in this application or in the representation made to R-1 (Annexure-A1). Even otherwise, the rulings cited by the learned counsel for the applicant to bolster up his claim for benefit under FR 56(b) have no applicability to the applicant's case.

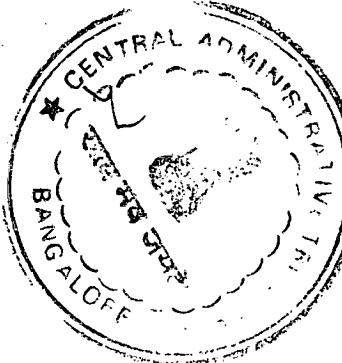


In the case of Jai Ram Lal Vs. Union of India and Others, the issue was whether an Ambulance Driver working in the Employees State Insurance Corporation (ESIC for short) was eligible to retire at the age of 58 or 60 years. There it was an accepted fact that the posts of Ambulance Driver in ESIC were classified as Group-C Non-Ministerial posts. Further, the second schedule to the ESIC (Staff and Conditions of Service) Regulations, 1959 provided that ^{the} age of retirement would be as may be prescribed from time to time by the Central Government in respect of the corresponding category of Central Government servants in Rule 56 of the Fundamental Rules." Relying upon the Supreme Court's judgement in the case of Des Raj & Others Vs. State of Punjab and others reported in 1988 (2) SCC 537 it was held by the Principal Bench of the Tribunal that an hospital continues to come within the definition of "industry" and a hospital under ESIC should therefore, constitute an industrial establishment till the amending Act 46 of 1982 came into force. Further, relying upon the Supreme Court's decision in Prithpal Singh Vs. Union of India (C.A. No.4689 of 1990 decided on 19.9.1990) that a Driver was a work-man, the Principal Bench of the Tribunal held that that the applicant being a work-man employed in an industrial establishment was entitled to retire at the age of 60 years in accordance with the provision contained in FR 56 (b). The applicant's case is ~~not~~ distinguishable from / Jai Ram Lal's case because the applicant was not working in an industrial establishment or in a work-charged establishment for the purpose of the Note below FR 56 (b).

7. The other case of P. Vasudevan and Anr.

Vs. Union of India & Ors. cited by the learned counsel for the applicant also does not help the applicant in the present case. There, the applicants were working as skilled workers Grade-II at the Government of India Extension Centre at Shoranur. They were retired on attaining the age of 58 years. They claimed that their retirement at the age of 58 was illegal and violative of FR 56(b) and so they should be allowed to continue in service till they attained the age of 60 years. Discussing the issue whether the applicants therein were workmen coming within the definition under the Note of FR56(b), and discussing the term 'Artisan' as found in the Note below FR 56(b) as also relying upon O.A.2209/1989 decided by the Principal Bench of the CAT, regarding FR 56(b), the Ernakulam Bench of the Tribunal held that the applicants before them were governed under FR 56 (b) and they should be retired after attaining the age of 60. As seen from the above, the applicants before the Ernakulam Bench of the Tribunal were artisans who were working in ^a industrial/ work-charged establishment, which is not the case with the applicant here.

8. An attempt was made by the learned counsel for the applicant that the applicant having been a Notice Server, used his limbs to walk and deliver notices, letters, etc., which is his basic function and therefore, he was a workman as defined in the Note below FR 56(b). The answer to this submission is found in the case of Vasudevan and Another Vs. Union of India and Others, cited by the learned counsel for the applicant himself. We quote paras 7 and 8 of that



judgement.

"para-7: The Principal Bench of Central Administrative Tribunal, in which one of us, Shri N.V. Krishnan was a Member considered this issue elaborately in O.A. 2209/89, in the light of various decisions, dictionary meanings etc. while examining whether pharmacist is a workman for the purpose of FR 56(b) and held as follows:

'These meanings required that one should not be merely doing manual work but should also be a craftsman. That imports the idea of dexterity in manual skills, which seems to be crucial to become an artisan. Thus, an artisan would be a person who is essentially and almost wholly dependent on the dexterity with which he performs manual functions, particularly, with his hand or legs or both. Thus, a blacksmith, a carpenter, a potter, a goldsmith will be artisans besides the other persons mentioned in the aforesaid definitions.'

All these persons no doubt perform manual work, but two characteristics can be noticed.

The first is that these types of work depend more on dexterous manual skills than intellectual attainments. Everyone has a mental concept of a chair and know what it looks like, but hardly any, but a carpenter can prepare one. It is only a carpenter who can make one using the skill of his hands for a full drawing, chopping etc. of wood. A clerk in an office uses his hand for a full day to write notes etc. This is a manual function. That does not make him an artisan because it does not call for any skilful use of his hand. The manual work done by him follows a very active intellectual or brain work. He must know what to write for which he has to think or read. On the same grounds, typists will not be an artisan. He can be a fast typist and very skilful, but this is different from dexterity in manual work. However, if instead of merely typing letters, notes or judgements - which do not call for any skill other than typing - he were to use the typewriter to produce a work of art - say a map of India or alikeness of Mahatma Gandhi - he too would be an artisan as he has in addition, used his skill with great dexterity to produce a work of art.

It would also appear that artisans are persons who produce goods on their own, which even if not made to order, are likely to sell in the market. Thus, given the resources, a carpenter can make chairs or a blacksmith can manufacture hammers etc. which will be available for sale. This aspect has not been adverted in the judgement of the Hon'ble Court referred to above.

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The manual work of a Vehicle Inspector is not like that of the carpenter or a blacksmith. It is more akin to that of a clerk or a typist, where the manual work follows a very active intellectual exercise. The inspection does not call for any dexterity in the use of his limbs.*

Para-8:- So an artisan is a person who not only uses his limbs for the discharge of his office duties, but whose brain and dexterity should also be in readiness to co-operate with or grace the physical activity. In other words, an artisan's activities and works for producing the result would vitally depend upon his dexterity, the skill and ease in using the limbs or the expertness and knowledge in that particular act. The readiness in the use or control of the mental power or quickness and skill in managing any complicated affair with the limbs is a relevant aspect in the work of an artisan. Mere mechanical and manual work without any skill, dexterity or mental co-operation would not probably make a worker an artisan as explained in the 'Note' to FR 56(b). "

In the light of the above, we hold that the applicant cannot be treated as an artisan because his job as a Notice Server ^{is} does not entail use of intelligence or dexterity but / confined only to use of his limbs.

9. Thus, no case has been made out by the applicant for his retirement on superannuation at the age of 60 years. In the result, this application fails and is dismissed. No order as to costs.

Sd/-

(T.V. RAMANAN)
MEMBER(A)

Sd/-

(P.K. SHYAMSUNDAR)
VICE CHAIRMAN



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