

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1291 /1995

Date of Decision: 1.11.96

T. W. Jadhav,

Petitioner/s

Smt. N. V. Masurkar,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Suresh Kumar for Shri M.I.
Sethna,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

Hegde
(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1291/95.

Dated this 18/11 the Friday day of November, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

T. W. Jadhav,
Type-II/9/2 TAPS Colony,
Tarapur, Bhoisar.
(By Advocate Smt. N.V. Masurkar)

... Applicant.

VERSUS

1. Union Of India through
The Secretary,
Government of India,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg,
Bombay - 400 039.

2. Chief Administrative Officer,
Nuclear Power Corporation,
Tarapur Atomic Power Station,
Post Office TAPS,
Dist.: Thane - 401 504.

3. Station Director,
TAPS, Nuclear Power Corp.,
Tarapur Atomic Power Station,
Post TAPS, Tarapur,
Dist. Thane - 401 504.

... Respondents.

(By Advocate Shri Suresh Kumar
for Shri M. I. Sethna).

: O R D E R :

PER.: SHRI B.S. HEGDE, MEMBER (J)

1. Heard Smt. N. V. Masurkar for the applicant
and Shri Suresh Kumar for Shri M.I. Sethna for the
respondents.

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2. The applicant has filed this O.A. on 30.10.1995 challenging the impugned order dated 20.10.1995 issued by the respondents, placed at exhibit-A-1 page 28 of the O.A. which reads as follows :

" It has been intimated by Department of Atomic Energy that Shri T.W. Jadhav, Watchman-cum-Fireman can superannuate either as Watchman-cum-Fireman on attaining the age of 58 years or as Watchman on attaining the age of 60 years. In case, he wishes to retire as Watchman on attaining the age of 60 years, he will have to be reverted to the post of Watchman on or before 30th October, 1995. On such reversion, he will draw basic pay of Rs. 940/- i.e. maximum of the scale of the post of Watchman (Rs. 750-12-840-14-940) from the date of reversion.

Shri Jadhav is, therefore, required to intimate whether he intends to be reverted to the post of Watchman or he intends to retire as Watchman-cum-fireman so as to determine his superannuation date. His intention be communicated in writing before October 28, 1995 failing which it will be presumed that he intends to retire as Watchman-cum-fireman and accordingly will superannuate on October 31, 1995. With the issue of this letter, his representation dated September 15, 1995 addressed to the Additional Secretary, D.A.E. stands disposed of."

On the basis of the submissions made by the Learned Counsel for the applicant, the Tribunal granted an

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ex-parte ad-interim order in terms of para 9(b) of the O.A. staying the operation of the impugned order dated 20.10.1995 from retiring the applicant on 31.10.1995 and reducing him to the post of Watchman. Pursuant to the notice issued by the Tribunal, the respondents made their appearance on 13.11.1995 and sought time for filing the reply and opposing the ad-interim order and the case was adjourned to 27.11.1995. Before that date, though the respondents filed their reply, however, for want of time, the matter could not be taken up and in the facts and circumstances of the case, both the parties urged that the matter may be heard and disposed of at the admission stage itself. The matter was finally heard on 30.10.1995 and was reserved for pronouncement of judgement, however, interim relief already granted shall continue till the pronouncement of order.

3. The facts of the case are that the applicant joined the Department of Atomic Energy as Watchman on 02.01.1963. As the promotional avenues for Watchman was very limited, the post of Watchman-cum-Fireman was created in 1974 in order to provide some incentives of promotion to such persons. The said post is a non-technical post belonging to the auxilary category. The applicant alongwith others was promoted to the post of Watchman-cum-Fireman on 13.06.1974 in the pre-revised scale of Rs. 260-350. The scale was revised w.e.f. 01.01.1986 to

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Rs. 950-1400/- p.m. upon the implementation of IVth Pay Commission's recommendation by the Government. Admittedly, the post of Watchman is a Group 'D' post and the post of Watchman-cum-Fireman is a Group 'C' post. Having served in the post of Watchman-cum-Fireman from 1974 onwards, the applicant had to superannuate at the age of 58 years. On perusal of the entire O.A., it is seen that the main grievance of the applicant is, that he should not be allowed to retire at the age of 58 years and should be allowed to retire at the age of 50 years. In this connection, the Learned Counsel for the applicant, Smt. Masurkar, draws our attention to the order passed by the Respondents vide dated 13.06.1974 appointing 8 people including the applicant as 'Watchman-cum-Fireman' in the Industrial Temporary Establishment of the Power Station w.e.f. 27.05.1974 in the scale of Rs. 260-350 for the period upto 28.02.1975. It is also stated that their terms and conditions of employment in the Industrial Temporary Establishment will be governed by the provisions of the Standing orders (being issued separately) except for their leave eligibility which will be governed by the Central Civil Services (Leave) Rules, 1972. Further, it is clear from exhibit A.VII that the applicant has been working at TAPS since the date of appointment i.e. 02.01.1963 as Watchman and was promoted as 'Watchman-cum-Fireman' in May 1974 and is working in the same capacity till now. It is clear from his representation

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vide dated 11.04.1995 wherein the applicant has stated that he fall under the category of Group 'C' employees and secondly, fireman of Central Fire Station are treated as technical person and they are promoted after every five years as per their norms and they should also be given the same promotions and allow to superannuate at the age of 60 years, etc. In this connection, the Learned Counsel for the applicant draws our attention to the rejoinder to which Office Memorandum dated 04.09.1987 is annexed, wherein it is stated that" The manpower for the aforesaid Corporation will be initially drawn from the D.A.E. The personnel of the NPB including those belonging to the Central Administrative and Accounts Cadres, borne on rolls of the Nuclear Power Board and the Atomic Power Projects and Atomic Power Station under its control and whose pay and allowances were paid by these units as on 07.09.1987 shall be transferred on deputation to the Company from the date the NPC takes over the operation of the NPB and commences business." Under Clause 3.10 it is also stated that the Corporation will be asked to make efforts to finalise the terms and conditions for employment of personnel of the Corporation within a period of 12months from the date of issue of this Memorandum and on finalisation of terms and conditions of service by the new Corporation, the officer and staff working on deputation will exercise

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their option for permanent absorption in the Corporation. She also draws our attention to the order of the Respondents dated 13.02.1974 wherein in view of the stagnation in the further promotion for Watchman in TAPS, 9 posts of Watchman-cum-Fireman were created.

4. The respondents in their reply submitted that the representation made by the applicant vide dated 11.04.1995 and subsequent representation made by him was considered by the competent authority and accordingly, it was decided to give an option to the applicant whether he would like to revert to the post of Watchman and intends to continue service till the age of 60 years as per Rule FR 56 (8). However, the applicant could not be considered for the post of Fireman as he did not fulfil the requisite norms to fill the said post. It is an admitted fact that the applicant has not been absorbed in the newly created corporation and his service alongwith others were lent on transfer on deputation and he still holds a lien in the D.A.E. and holds civil post according to rules, thereby, the contention of the applicant that he is governed by the standing orders of the Corporation does not in any way help him to agitate his case that he should be allowed to retire at the age of 60 years. The respondents had given an option to the applicant, which he did not exercise and did not make any representation, as suggested in the Option letter, instead he straight away approached the Tribunal and

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obtain an ex-parte interim order. The order passed by the respondents vide dated 20.10.1995 is legal and valid in the eye of law and is in accordance with the law. The learned counsel for the respondents therefore submits that the O.A. is to be dismissed with cost.

5. The Learned Counsel for the applicant, in support of her contention that the applicant should be allowed to retire at the age of 60, relies upon F.R. 56(b) which reads as follows :-

" 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."

Therefore, the contention of the applicant's counsel is the applicant is concerned with Rule F.R. 56 (b), thereby, he may be allowed to retire only at the age of 60 and not at the age of 58. In support of her contention, she relies on the judgement delivered by the Hyderabad Bench 1989 (4)(CAT) 615 G.N. Khedkar V/s. The Manager, Personnel & Administration Department, Nuclear Fuel Complex, Hyderabad & Others, wherein the Tribunal had interpreted Rule F.R. 56. In that case, the applicant

was appointed as U.D.C. in the Nuclear Fuel Complex, Hyderabad, claiming that he is a workman and that he is entitled to continue in service till he attains 60 years of age and that he will be governed by the provisions of the certified standing orders of the N.F.C. that clerks are workmen as defined in Section 5 of the Industrial Disputes Act and accordingly, he should be allowed to continue upto the age of 60 years. The Tribunal, after considering the contentions of both the parties, treated the applicant as Ministerial servant, doing purely clerical duties and held that he was not a workman under Standing Orders Act, 1946. The next question which arises is, whether the applicant is governed by Fundamental Rules or by the Nuclear Fuel Complex standing orders. It is the case of the respondents that by virtue of Section 13.8 of the Industrial Employment (Standing Orders) Act, 1946, the Fundamental Rules are applicable to the applicant, that the N.F.C. has certified notwithstanding the fact of Standing Orders, they are not applicable to the employees. That plea has been upheld by the Tribunal and also a further contention of the applicant that Fundamental Rules 56 is discriminatory, that is also rejected. Therefore, in our view, reliance placed by the Learned Counsel for the applicant in this decision would be in no way beneficial to the case of the applicant and hence, we hold that the Standing Orders would not be applicable to the case of the applicant

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and is of no consequence, on the other hand, it supports the contention of the respondents. As against this, the Learned Counsel for the respondents urged that the applicant being a Class-III employee, he cannot take the advantage of Fundamental Rules 56-B. Therefore, they were perforced to give an option by the letter dated 20.10.1995 whether he inclines to work as a Watchman or to retire at the age of 58 years in the capacity of Watchman-cum-Fireman. As stated earlier, he did not give his option and submitted that he should be allowed to continue till the age of 60 years without any valid reason. In support of his contention, the Learned Counsel for the respondents relies upon the decision of Supreme Court in the case of State of Orissa & Others V/s. Adwait Charan Mohanty [1995 (1) S.C. Services Law Judgements 262] wherein the Apex Court held that 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 work-charged 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 Orissa Service Code. In that connection, the Apex Court held that the question

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is whether they are entitled to the benefit of the second proviso to Rule 71(a) of the Code. It is unfortunate that the Tribunal had turned its blind eye to the rules and blissfully omitted to advert to the main part of the Rule 71(a) of the Code and the Rules read with Schedule-B of the Rules. The entire focus was concentrated only on the consideration of the word 'workman' and the 'establishment' enumerated in the Note to the proviso. Rule 71(a) of the Code and the second proviso and the note appended to it must be read together harmoniously to give effect to every part of it. A reading thereof would indicate that Class-I, II and III government servants shall retire on attaining the age of 58 years and Class-IV employees are excluded from its operation. Therefore, it was observed 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.

6. In the light of the above, the ratio and the decision laid down by the Apex Court, in our view, is fully applicable to the facts of this case. Since the applicant has been treated as a Class-III employee, though option was given whether he would continue as Class-IV employee, he did not avail of the same and keeping in

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view the ratio of the Supreme Court, it is not permissible to allow the applicant to continue in the capacity of Watchman-cum-Fireman after he attains the age of 58 years. Fundamental Rules 56-B is para-materia with ~~Rmk~~ the second proviso to Rule 71(a) of the Orissa Service Code. Therefore, it is clear that no specific orders are necessary for retirement on due date. Since the applicant has already attained the age of retirement on 31.10.1995, any further services rendered by him will not be counted for the purpose of retiral benefits. Since he was allowed to work after attaining the age of 58 years, he shall only be entitled to get the salary in the capacity of Watchman-cum-Fireman and the pay already drawn by him shall not be refundable.

7. In the result, we see no merit in the O.A. and the same is dismissed at the admission stage itself after hearing both the parties but there will be no order as to cost. It is open to the respondents to pass an appropriate order retiring the applicant in the facts and circumstances of the case. Interim relief granted earlier stands vacated.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B.Hegde

(B. S. HEGDE)
MEMBER (J).