

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 56 of 1997.

Dated this Tuesday the 4th day of September 2001
B.S

K. P. Raghavan, Applicant.

Shri P. A. Prabhakaran, Advocate for the
Applicant.

VERSUS

Union of India & Another, Respondents.

Shri V. D. Vadhavkar for Advocate for
Shri M. I. Sethna, Respondents.

CORAM : Hon'ble Shri Justice B. Dikshit, Vice-Chairman.
Hon'ble Shri B. N. Bahadur, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other X
Benches of the Tribunal ?
- (iii) Library. P

B.N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

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Hon'ble Shri B. N. Bahadur, Member (A).

K. P. Raghavan,
Manager Salesman (Retd.),
Meteorological Canteen,
Mumbai.

C/o. Shri Sidharth Jadhav,
Income-Tax Departmental Canteen,
CGO bldg. Annexe, 5th floor,
M. K. Road, Mumbai.

... Applicant.

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Government of India through
The Secretary,
India Meteorology Department,
New Delhi.

2. Director General of Meteorology,
Regional Meteorological Centre,
Colaba, Mumbai - 400 005.

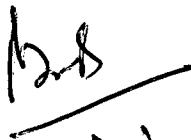
... Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

O R D E R

PER : Shri B. N. Bahadur, Member (A)

This is an application made by Shri K. P. Raghavan, retired Manager-Saleman, Metereological Canteen, Mumbai, who challenges the order dated 11.04.1995, made by the Respondent No. 2, in retiring the Applicant at the age of 58 years. The facts, as made out by the Applicant in the O.A., are that the Applicant



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was recruited as a Halwai, in the Metreological Canteen, Mumbai, in March, 1976; & promoted as Manager-Salesman on 06.08.1983. Applicant avers that Canteen employees were treated as Central Government employees w.e.f. 01.10.1991, and entitled to all benefits, as such in view of Supreme Court Judgement as cited at para 4.3 of the O.A.; Applicant contends that the Ministry of Personnel had brought this to the notice of all concerned vide Memorandum dated 29.01.1992.

2. The Applicant, thereafter, seeks support to his case by citing the details of the above Memorandum, and expresses grievance at being reitred at the age of 58 years instead of at 60 years of age. The Applicant, thus, seeks the relief from this Tribunal that he be declared as deemed to have retired on his attaining the age of 60 years, i.e. on 28.02.1995, and also for treating the period between 28.02.1993 and 28.02.1995 as being entitled to be taken into consideration for calculating retiral benefits. He also seeks arrears for this two year period, with interest on all dues claimed.

3. The Respondents in the case have filed a Written Statement in reply, denying all claims and allegations. It is stated that the Respondents' Department has a co-operative departmental canteen, which is run on co-operative basis. It is contended that upto a particular time, employees of this Canteen were not Central Government employees, and their services were governed by Recruitment Rules of 23.12.1980 which, interalia,

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provided that retirement age of canteen employees would be 60 years. Another clause in the Rules provided that pursuant to the introduction of the rules of 23.12.1980, the services of employees have to be taken into account as on 01.10.1979. In view of Supreme Court judgement, the status of Central Government servants was to be bestowed on these employees w.e.f. 01.10.1991 as Group 'C' employees (Applicant was Manager-cum-Salesman). It is further contended by Respondents that Group 'C' employees retire under the Fundamental Rules applicable to Central Government employees, on completion of 58 years of age. It is contended that the Applicant was accordingly retired on 28.02.1993. The further part of the Written Statement deals with the contentions made in attempting to meet the averments in the O.A., parawise, and also attempts to provide arguments based on the Rules and other notifications of the Government.

4. Detailed statements are also made in the Written Statement of Respondents as regards claims of pension and retirement benefits and the action taken/stand in this regard is described. Details are cited and these will be referred to as and when relevant ahead.

5. We have seen the papers in the case, and have heard the Learned Counsel on both sides. The Learned Counsel for the Applicant took us over the facts of the case, referring to all the points made in the O.A., in detail, and reiterated that the O.M. dated 05.06.1995 which he states was made as clarification.

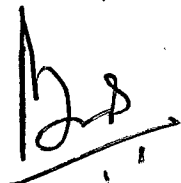


A copy of this O.M. dated 05.06.1995 is provided in extract available at Annexure A-6 at page 16 of the Paper Book. Learned Counsel then tried to meet the point regarding delay and laches and stated that the Applicant had been representing the matter orally and in fact, had filed the first O.A. on 01.10.1996.

6. Arguing the case on behalf of the Respondents, their Learned Counsel argued at length on delay and laches. On merits, he contended that the clarification referred to, (O.M. at page 16) can only have prospective effect. He denied that any representation had been made by the applicant as could be seen from the averments in the O.A. He also made the point that there was no application for condonation of delay either and the application therefore deserves to be dismissed on this count alone.

7. The facts per se in this case are simple and, by and large, not under dispute by rival parties. What is needed for adjudication of the case is an interpretation of the circulars/instructions, etc. with reference to the basic declaration of the Hon'ble Supreme Court, as brought forth by both sides. The stand of the Department is that the applicant was a employee of the Departmental canteen run on co-operative basis and hence, governed by Recruitment Rules of 1980. Now, once he becomes a Government employee in view of the judgement of the Supreme Court and since he is of Group 'C' status, his date of retirement will now be governed as per the Government rules and hence, to be retired at 58, which was then the age of retirement.

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8. The Office Memorandum dated 29.01.1992 issued by the Ministry of Personnel, P.G. & T. makes the position clear in as much as it decides the employees of Co-operative Canteen, etc. should be treated as Government servants with effect from 01.10.1991. Also that all benefits available to Central Government employees will be available to them, as described in the Circular. The O.M. dated 16.11.1992 relates to matters regarding pensionary benefits and G.P.F. What is important before the Tribunal here is the relevance of the O.M. dated 05.06.1995 issued by the Department of Personnel and Training of the Government of India, a copy of which has been filed as annexure A-6 to the O.A. and available at page 16. In fact this O.M. is also filed by Respondent and its support sought. A stand was taken on behalf of the Respondents in their Written Statement at para 2 as follows :-

"It is true that under the order dated 5.6.95 certain benefit was conferred specifically on such Departmental Canteen employees; however before 5.6.95 order the present Petitioner had already retired and therefore he could not be given such benefit inasmuch as even under the 5.6.95 order the Petitioner would have retired on 28.2.95 on superannuation at 60 years of age. Admittedly the Petitioner never worked after 28.2.93 and therefore there cannot be any pay without work."

It was also argued that this O.M. (of 05.06.1995) would have prospective effect only and is hence not applicable to the Applicant. This is an argument which cannot be accepted. Firstly, it is clear in this O.M. that a clarification has been issued in respect of those employees as to what would be the

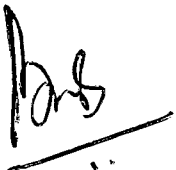


retiring age "in respect of Group 'C' canteen employees". That this is a clarification is stated in para 2 of the O.M. It cannot be the argument of anyone that a clarification can have a prospective effect only. In fact, as per the accepted legal position, a clarification has retrospective effect.

9. Now here in this case the Applicant was retired on 28.02.1993. The O.M. in question which has to be relied on by us is dated 05.06.1995 by which date the Applicant would have retired even if retirement age was taken as 60, in his case. While, therefore, we do not ascribe any motives to the Respondents in retiring applicant at the age of 58, (especially since clarification came later) we certainly cannot accept the argument that the O.M. dated 05.06.1995 would have only prospective effect. It is clear that the applicant should have been allowed to continue upto the age of 60 years.

10. In the circumstances of the case, it will have to be directed that the period of two years from 01.03.1993 to 28.02.1995 shall be treated as service rendered by the Applicant. At this stage obviously, the order can be notional only. It would not be possible for the Tribunal, under the circumstances described above, to provide monetary dues to the applicant for actual salary for the two year period. This is for the reason, interalia, about clarification coming late, as discussed above, and also for the reason that even though the cause of action

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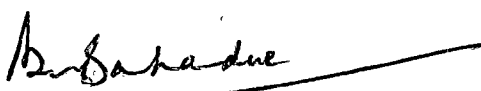


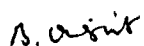
arose on 01.03.1993, he chose to come to the Tribunal only on 01.01.1997.

11. In view of the discussions above, this O.A. is allowed to the extent and in terms of the following orders :

(i) The period of two years between 01.03.1993 and 28.02.1995 will be counted as service rendered by the Applicant for the purpose of calculation of retiral benefits. Notional fixation of salary for this purpose shall be made, taking into account any increment due during the period. Retiral benefits as due to the applicants under rules shall be recalculated and paid to the Applicant with effect from 01.03.1995. No interest will be payable.

(ii) No order as to costs.


(B.N. BAHADUR)
MEMBER (A).


(B. DIKSHIT)
VICE-CHAIRMAN.

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