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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.
CIRCUIT AT JAIPUR.

Date of Decision: Feb. 16, 1990.

T.A. No. 2508/86
C.A. 210/81(77/81)

A.H. KHAN

... Petitioner.

Mr. M.S. Gupta

... Counsel for the petitioner.

Versus

UNION OF INDIA & ORS.

... Respondents.

Mr. R.N. Mathur

... Counsel for the respondents.

CORAM:

THE HON'BLE SHRI KAUSHAL KUMAR... VICE CHAIRMAN.

THE HON'BLE SHRI J.P. SHARMA... JUDICIAL MEMBER.

J.P. SHARMA

The above Civil Appeal was received by transfer from District Judge, Jaipur under Section 29 of Administrative Tribunals Act, 1985.

The applicant A.H.Khan filed the Civil Suit 369/78 in the court of Additional Munsif, Jaipur West on 20.11.78 for the relief:-

The Suit of the plaintiff against the respondents be decreed for declaration that the retirement of the plaintiff on 20.9.75 is illegal and ineffective, on account of the lien of the plaintiff on the Ministerial cadre, and as such the superannuation age, is date 31.7.76 and the plaintiff is entitled for all consequential benefits without any break.

The respondents contested the Suit and denied the contentions and relief claimed by the plaintiff.

The facts of the case are that the plaintiff was employed as a Travelling Porter on 3.7.36 and was confirmed in this post on 30.7.37. Thereafter the plaintiff was promoted on 1.12.45 as a Storeman and was confirmed in that posting. The plaintiff was promoted in clerical grade on 8.4.58 and was posted on 6.8.60 as Adm. Trunk Telephone Operator (ATTO), the date of birth of the plaintiff as given by him as 11.7.16 but the respondents from record pointed out that it is 16.7.16.

Under Railway Establishment Code Volume-2 rule 2046 it is laid down that the persons who are in service and in permanent cadre before 1.4.38 in the Ministerial staff would retire at the age of 60. The contention of the plaintiff is that since he was in Ministerial cadre so his superannuation should have been on 15.7.76 but he has been retired on 20.9.75 because the Railway Board by order dated 19.8.75 gave the direction that the category of Telephone Operator be deleted from Ministerial staff category. The plaintiff alleged that he was not given any option whether, to remain in the cadre of Telephone Operators, or to switch over or shift to Ministerial cadre and so, his retirement on 20.9.75 has been wrongly effected to his disadvantage and the declaration be given that the said order of his retirement earlier to attaining 60 years of age is illegal and ineffective and he be deemed to be in service till he attaint the age of 60 years on 15.7.76.

The respondents in written statement contended that before April 1938, the applicant was not in the Ministerial cadre as he was only confirmed Travelling Porter. Further the Rule 2046 relied by the plaintiff does not apply in his case. The Telephone Operators by the order



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dated 20.2.59 of the Railway Board were included in the Ministerial cadre but in the year 1965 the applicant himself has given the option of being placed in the cadre of Telephone Operators. The Railway Board by the direction in the order dated 15.8.75 deleted the category of Telephone Operators from the Ministerial staff and placed them in non-ministerial staff and in pursuance of that order of Railway Board, the plaintiff was retired from service on 20.9.75 while he was working as Telephone Operator.

The learned Munsif framed as many as nine issues:



- (i) Whether the plaintiff as per provisions of Railway Establishment Code should have been retired at the age of 60 ?
- (ii) Whether by the order of the Railway Board dated 19.8.75, it was necessary to take option from the plaintiff ?
- (iii) Whether the Railway Establishment Rule 2046 does not apply to the plaintiff ?
- (iv) Whether the Suit is barred by limitation ?
- (v) Whether the plaintiff cannot get the relief by the notice under Section 80 C.P.C. ?
- (vi) Whether the Suit without consequential relief is not maintainable ?
- (vii) Whether the retirement of the plaintiff is hit by Article 311 of the Constitution of India ?
- (viii) Whether the plaintiff himself gave the option for Telephone Operator and he is bound by the orders passed on the service conditions of Telephone Operator and he is bound by the orders passed on the service conditions of Telephone Operators ?
- (ix) Relief ?

The learned Munsif in the judgment dated 2.5.81 decided the issues separately. Issue No.1,2,3,7,8 and 9

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were decided against the plaintiff and in favour of the defendants, the rest of the issues were decided in favour of the plaintiff. As a result of this, the Suit of the plaintiff was dismissed.

The plaintiff filed an appeal before the District Judge, Jaipur, challenging the judgment of the learned Munsif, Jaipur. On grounds, that the judgment is against law and facts and the learned lower Court has erred in accepting the contention of the respondents that there was no need for asking for a option whether to remain in the cadre of Telephone Operators or to go to Ministerial cadre.

We heard the learned counsel of both the parties and perused the record. The learned counsel for the applicant in the T.A. (appellant) only pressed issues No.1 & 2 , 3 and 8. In fact these are the main issues which cover the matter whether the superannuation age of the applicant should have been 60 years or 58 years. It also covers the matter, whether the option, either to remain in the cadre of Telephone Operators, or to clerical grade of Ministerial cadre is to be required from the effected persons including the applicant.

Firstly, the applicant joined the service in a non-ministerial cadre, so he cannot say that the service conditions were changed by the circular of the Railway Board on 19.8.75. This letter is Exhibit A-3 and is reproduced below:-

Copy of Board's letter No.E(G)75RTI-I dt. 19.8.75 from Rly. Board to the GMs, Indian Railways and others.

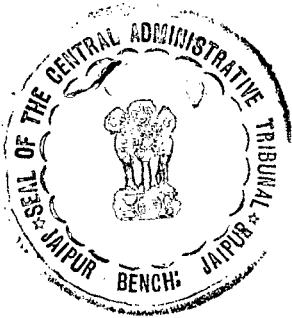
Sub:- Amendment to Note under Rule 2046(b) -
(FR56) - R.II - Ministerial Railway
Servants - Classification of -

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Reference instructions contained in BD's letter No.E(G)58RTI-16 dt. the 20th February, 1959.

2. The Board on re-consideration of the matter have decided that the post of Telephone Operators may be deleted from the list of Ministerial categories of staff circulated vide their letter No.E48RTI/9/2 dated 1.8.51 read with Board's letter No.E(G)58RTI-16 dated 20.2.1959."

This order of the Railway Board is binding on the employees irrespective of the fact whether the option was taken from them or not. The employer has a right to pass any order regarding the service conditions and that still will bind the employee. Secondly, the applicant vide Exhibit A-2 on 25.11.65 gave his option that he has opted for Telephone Operator side. Thirdly, it was by the Railway Board order dated 20.2.59 that 16 posts of Telephone Operators were included in Ministerial cadre in Mechanical, Operating, Commercial and General Branches. On 22.9.65 the Railway issued a circular regarding the revised pay scales of Telephone Operators in three grades of Telephone Operator, Senior Telephone Operator and Head Telephone Operator, (Exhibit A-1). Thus, it is evident that the applicant, when he joined the service was in non-ministerial cadre in 1936 and in 1965 he gave an option to remain on this side of Telephone Operators. He, therefore, is bound by extant service conditions. The order of the Railway Board is not arbitrary in-as-much-as it is a policy decision taken by the respondents.



The learned counsel for the applicant conceded that the respondent can reduce the age of superannuation but the only point highlighted by the learned counsel is that the option of the applicant should have been taken before applying the order of the Railway Board in his case. However, the learned counsel could not cite any rule or

precedent to support his contention. On the other hand, the learned counsel for the respondent relied on the Supreme Court case regarding State of Andhra Pradesh where the retirement age was reduced from the age 58 to 55 and the same was upheld in the aforesaid judgment. (1985(1) SLJ 277 K.Nagraj & others vs. State of Andhra Pradesh).

The learned Munsif in the impugned judgment considered these documents and the oral evidence given by the applicant himself as PW-I and of the respondent R.M. Sharma as DW-I and gave the finding on issues is No.1,2,3,8 and 9 against the plaintiff. The findings arrived at by the learned Munsif in the impugned judgment cannot in anyway be said to be unjustified. The learned Munsif rightly observed that the service rules or instructions issued by Railway Board are binding regarding the service conditions on the employee.

We, therefore, find no reason to defer with the findings of the learned Munsif and the judgment does not call for any interference. The appeal is devoid of merit.

The T.A., therefore, has no merit is — dismissed with cost on parties.



J. P. Sharma

(J. P. SHARMA) 16.2.90
JUDL MEMBER

K. Kumar
16.2.90

(KAUSHAL KUMAR)
VICE CHAIRMAN