

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 828/92

Date of decision: 10.9.93

RADHA KRISHNA

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. B.M. Singh

: Counsel for the applicant.

Mr. V.S. Gurjar

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER:

The applicant has filed this O.A. praying that the retirement date of the applicant declared by the respondents as 31.10.82 may be declared as illegal and may be quashed. He has further prayed that it may be held that the applicant was due to retire on superannuation on completion of age of 60 years. He has further prayed that his pensionary benefits should be settled after taking into account that he retired on completion of 60 years of age.

2. The applicant was appointed as Work Mistry in the Central Public Works Department on 24.10.54. The respondents passed order dated 31.10.84 (Annexure A-2) stating therein that on reaching the age of superannuation, the applicant would retire from service in the afternoon of 31.10.84. This date of retirement fell on completion of 60 years of age. Subsequently, the respondents addressed a letter dated 27.1.89 to the applicant, in response to representation made by him, that his pension case had been settled after treating his date of retirement as 31.10.1982, i.e. on completion of 58 years of age. The applicant's case is that his appointment was covered by FR-56 (b) applicable to work charged establishment and that, therefore, he was entitled to continue in service upto the age of 60 years.

3. The respondents have stated that it was by a clerical error that he was allowed to continue in service till the completion of age of 60 years, and this clerical error was rectified subsequently after he had retired ^{and} that accordingly the applicant was granted pensionary benefits w.e.f. the date of retirement which fell on completion of 58 years. They have claimed that the case of the applicant falls within FR-56 (a) relating to regular establishment and since he was working on regular establishment and not on work charged establishment, his correct age of retirement would be 58 years. They have further claimed that since full pay and

allowances for two extra years for which the applicant worked have already been paid to him during his service period, there is no case now for revising his pensionary benefits also on the ground that he was entitled to retire on completion of 60 years of age.

4. We have heard the learned counsel for the parties and perused the records.

5. We do not want to enter into the controversy whether the applicant's case is covered by FR-56(a) or FR-56(b). The respondents themselves have passed a specific order stating that the applicant would retire from service on 31.10.84 (Annexure A-2). Therefore, he was made to work on the post for a period of 2 years beyond the age of 58 years. Thus, the respondents themselves treated the applicant as one who was entitled to continue in service upto the age of 60 years. If the applicant did indeed work continuously upto the age of 60 years, he is entitled to pensionary benefits on the basis that he had served upto the age of sixty years. Even if there was a clerical error in passing order dated 31.10.84 (Annexure A-2), fact remains that the applicant was allowed to continue in service upto the age of 60 years and it was not because of suppression of any facts or misrepresentation of any facts ^{by him} that the applicant continued in service upto the age of 60 years.

6. In these circumstances, we hold that the applicant was entitled to continue in service upto the age of 60 years. Therefore, pensionary benefits should be granted to him on the basis of the pay drawn during the last ten months of service and the last pay drawn on 31.10.84 and this should be treated as the date of his normal superannuation. Necessary pensionary benefits should be granted to the applicant with ⁱⁿ a period of four months from the date of receipt of this order. Order (Annexure A-1) is quashed.

7. There shall be no order as to costs.

(O.P. SHARMA)
Administrative Member

D.L. MEHTA
Vice-Chairman