

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

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C.A.NO. 376 & Batch F 1995

DATE OF DECISION: 5-3-98

SYED YASEEN & ORS

PETITIONER(S)

NR SRINIVASAN

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

THE GM, TELECOM & ORS

RESPONDENT(S)

M/s V.Bhimanna & K.Bhaskar Rao ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SHRI R.RANGARAJAN, MEMBER. (A)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the judgement? *ys*
2. To be referred to the Reporter or not? *ys*
3. Whether their Lordships wish to see the fair copy of the judgement? *—*
4. Whether the judgement ~~xxx~~ is to be circulated to the other Benches? *—*

JUDGEMENT DELIVERED BY HON'BLE SRI R.RANGARAJAN, MEMBER (A)

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HRRN
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NOS. 376, 380 and 507 OF 1995

DATE OF JUDGEMENT: 5 March, 1998

BETWEEN:

O.A.NO.376/95

SYED YASEEN

.. APPLICANT

AND

1. The General Manager, Telecom,
District, Vijayawada 520 010,
2. The Chief General Manager,
Telecommunications, A.P,
Hyderabad 500 001,
3. The Chairman,
Telecom Commission (representing
Union of India), Sanchar Bhawan,
New Delhi 110 001.

.. RESPONDENTS

O.A.NO.380/95

K.VENKATESWARA RAO-I

.. APPLICANT

AND

1. The General Manager, Telecom,
District, Vijayawada 520 010,
2. The Chief General Manager,
Telecom, A.P,
Hyderabad 500 001,
3. The Chairman,
Telecom Commission
(representing Union of India),
Sanchar Bhawan,
New Delhi 110 001.

.. RESPONDENTS

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O.A.NO.507/95

Ka. ~~S~~OMANATH

.. APPLICANT

AND

1. The Chairman, Telecom Commission,
(representing Union of India),
Sanchar Bhawan,

New Delhi 110 001,
2. The Chief General Manager,
Telecom, Andhra Pradesh,
Hyderabad 500 001,
3. The General Manager,
Telecom, Hyderabad Area,
CTO Building, M.G.Road,
Secunderabad 500 003,
4. The Telecom District Manager,
Anantapur 515 050.

.. RESPONDENTS

COUNSEL FOR THE APPLICANTS: Mr.N.R.Srinivasan in all OAs

COUNSEL FOR RESPONDENTS: Mr.V.Bhimanna in OAs 376 & 507/95

Mr.K.BHASKAR RAO in OA 380/95

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

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contd....3

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.N.R.Srinivasan, learned counsel for the applicants in all the three OAs; Mr.V.Bhimanna, learned standing counsel for the respondents in OA 376/95 and 507/95 and Mr.Kota Bhaskara Rao, learned standing counsel for the respondents in OA 380/95. All the three OAs were heard seperately.

2. The contentions in all the three OAs are same so also the reliefs asked for. Hence all the three OAs are disposed of by common order.

3. The applicant in OA 376/95 was initially recruited as Mechanic in the Technical and Development Circle of the Telecommunications Department and was appointed as Mechanic with effect from 25.3.1958 after 12 months of intensive training consisting of six months of theoretical training and six months of practical training vide Annexure A-1. His date of birth as per Secondary School Leaving Certificate issued by the Board High School, Cumbum (Kurnool Dist) is 6.3.1937. This date of birth has been entered in the applicant's ^{Service} record.

4. The designation of Mechanic was changed as Technician in 1972 by the Department. The applicant submits that the duty list enumerated under the letter dated 13.11.48 (Annexure A-3) and under letter No.25-8/49/TE dated 3.12.49 (Annexure A-4) remained ^{the} same even after the designation of Mechanic was changed as Technician in 1972. The applicant was further promoted as Higher

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Grade Technician in the scale of pay of Rs.425-640 (Pre-revised scale) by the memo dated 27.5.76 (Annexure A-6). Even then, the duty performed by the applicant remained the same. Subsequently the designation of Higher Grade Technician was changed to Technical Supervisor (Operative) again with no change in the duties or emoluments. The word Supervisor in the opinion of the applicant does not connote any supervisory functions allotted to him. He had neither supervised his subordinates nor his juniors in the cadre at any time. The applicant was promoted to the scale of Rs.1600-2660 on completion of 26 years of service under the Biennial Cadre Review Scheme with effect from 16.10.90 (Annexure A-7). Even then the promotion did not result any change in the nature of duties performed by him. He continued to perform the same duties as in the past namely installation of exchange equipment.

5. The Department is regulating the superannuation of the officers in the cadre of Mechanics (Technicians) including those in the promoted grades under the provisions of FR 56(a) i.e, retiring the officials on their attaining the age of 58 years. In view of the above the applicant was directed to submit his pension/retirement gratuity papers as he had to retire on 31.2.95 on attaining the age of 58 years vide Annexure A-8 letter. The applicant submitted the same. However, the applicant submitted a representation addressed to R-1 vide his letter dated 13.2.95 (Annexure A-9) that the provisions of FR 56 (a) are wrongly being applied in his case. Since he is Highly Skilled worker working in the Telecom department which is held to be an Industry under the Industrial Disputes Act,

1947 by the Courts, his superannuation should be regulated under the provisions of FR 56(b). He was not replied to his representation till 31.3.97. Hence he has filed this OA.

6. The applicant in OA ³⁸⁰~~276~~/95 was appointed as Lineman with effect from 20.2.58 after training. He is presently working as Technical Supervisor (Operative) in the scale of pay of Rs.1400-2500 in the Office of the Sub Divisional Engineer, Trunk Maintenance, City Telephone Exchange, Vijayawada under R-1. He also submitted a representation to R-1 to retire him in accordance with the provisions of FR 56(b) after he attains the age of 60 years. It is stated that his representation was also not replied so far.

7. The applicant in OA 507/95 was recruited initially as Mechanic in Kurnool Telegraph Engineering Division in the scale of pay of Rs.60-135 with effect from 30.8.1957. He is presently working as Technician Grade III formerly called Technical Supervisor (Operative) in the scale of pay of Rs.1600-2660 under R-4. He also submitted representation dated 15.3.95 addressed to R-2 to continue him in service till he attains the age of 60 years under the provisions of FR 56(b).

8. All the three OAs are filed praying for a direction to R-1 to retire them after they attain the age of 60 years in accordance with FR 56(b) and also praying for granting costs and Advocate's fee.

9. All the three applicants in these OAs were retired after they attained the age of 58 years in accordance with FR 56(a). As their representations for retiring them after completion of 60 years of age as per FR 56(b) read with note beneath FR 56 were not replied, they have filed these OAs for retiring them at the age of 60 years in accordance with FR 56(b) as they submit that they are workmen and come under the note incorporated in FR 56(b).

10. Their contentions for granting them the above relief are as follows:-

(i) They are doing the duties of Mechanical Workmen right from the time they joined the service either as Mechanic or Linemen. Even though they were working now in the higher scale called Technicians in the scale of pay of Rs.1600-2660/Rs.1400-2300 they continued to discharge the same duties as was done when they joined the service. The duty lists ^{adhered} ~~performed~~ by them from time to time are enclosed. The first duty list issued on 13.11.48, the duty list issued on 3.12.49 and the duty list issued on 10.12.75 are enclosed at Annexures A-2, A-3 and A-4 respectively. They submit that a study of these duty lists issued from time to time will definitely indicate that the duty lists have not underwent any change. The duties performed by them when they joined initially either as Mechanic or Linemen continued to be in the same manner even if they are in the higher grade posts in the scale of pay of Rs.1600-2660/Rs.1400-2300. They were not asked to discharge any other duties much less any supervisory duties. Hence they are "workmen" and come under the provisions of FR 56(b) and

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hence they should be retired after attaining the age of 60 years as per FR 56(b).

(ii) The applicants relying on a case reported in 1991(17) ATC 659 (Jugal Singh v. Chandigarh Administration) delivered by the Chandigarh Bench of this Tribunal submit that the criteria laid down to decide whether an employee is a workman or not under FR 56(b) by the Chandigarh Bench of the Tribunal is fully applicable in their case. That reported case fully covers their case as they fulfil all the criteria laid down by the Bench in that case. The said case lays down the following ingredients to be satisfied before a particular employee can be said to be a workman under FR 56(b):-

- (a) He should be a highly skilled, skilled, semi-skilled or unskilled artisan;
- (b) He should be employed on a monthly rate of pay, and
- (c) The employment should be in an industrial or work-charged establishment.

As they also fulfil the conditions as laid down above, retiring them at the age of 58 years under FR 56(a) is erroneous and has to be set right by retiring them at the age of 60 years under FR 56(b).

(iii) The recommendations of the Second Central Pay Commission in Para 82 declare that "Mechanics are

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Skilled workers employed on maintenance duties and construction work under Engineering Supervisors, Wireless Operators of Repeater Station Assistants." They also rely on para 84 of the said report to draw the attention of the authorities to state that even though they are called Technical Supervisors (Operative) they are performing the duties of Artisans based on their duty list and responsibilities. Even though the wage relativities had changed subsequently, the change of wage relativities do not negate the Pay Commission's conclusions on the status of these officials including the applicants as Skilled Artisans.

hence retirement as per FR 56(a) is erroneous.

(iv) The Telecom Department is held to be an Industry by the Supreme Court in the various judgments and recently also it has been held by the Supreme Court that the Telecom Department is an Industrial establishment. Hence they fulfil the conditions that they are employed in an industry to retire them as per FR 56(b). They are monthly paid staff and hence there is no need to retire them at the age of 58 years as per FR 56(a)

11. They also relied on a number of judgements, which will subsequently be analysed, to state that similar cases had already been disposed of by the other Benches of the Tribunal and on that basis they are entitled for retirement as per FR 56(b) treating them as workmen.

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12. We have heard all the parties concerned. The various contentions which are raised are analysed below:-

The applicants relied on a number of judgements to grant them the relief prayed for in these OAs. These judgements are analysed below concisely:-

In the reported case in (1992) 19 ATC 693 (P.Vasudevan v. Union of India), the Bench of the Tribunal had delivered the judgement in regard to the retiring of the applicants therein who were working as Skilled Workers Gr.II at the Govt. of India Extension Centre at Shoranur and allowed the application on the basis that the applicants therein come under FR 56(b) on the basis of their interpretation. A study of the judgment clearly indicates that they are skilled workers. Their scales of pay are not indicated in that judgement.

(ii) In the reported case in (1990) 14 ATC 568 (R.N.Anaokar v. Union of India), the New Bombay Bench of the Tribunal held that the applicant in that OA who was employed as Electroplater in the All India Institute of Physical Medicine and Rehabilitation at Mahalaxmi, Bombay is liable to be retired only under FR 56(b) after attaining the age of ⁶⁰~~58~~ years after interpreting the provisions of FR 56(b). In that OA also though designation of the applicant is shown as Electroplater, the scale of pay of the applicant is not indicated.

(iii) In the reported case in (1993) 23 ATC 839 (Prithpal Singh v. Union of India), the Principal Bench of

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the Tribunal, New Delhi held that the applicant in that OA who was employed as Staff Car Driver in the Ministry of Surface Transport (Transport Wing), Govt. of India has to be retired at the age of 58 years as per FR 56(a) and his retirement under the Provisions of clause (b) of the FR 56 under which he claimed to be superannuated on attaining the age of 60 years was dismissed. There also though no scale of pay has been indicated, it is evident that a Staff Car Driver of the Ministry of Surface Transport is in the Highly Skilled or Skilled Category. Even the skilled category employee is not to be retired at the age of 60 years.

(v) In the reported case in (1993) 23 ATC 845 (H.S.Sokhi v. Director General of Works, CPWD) of the Principal Bench of the Tribunal, a question had arisen whether a Junior Engineer in CPWD was a Skilled Artisan and, therefore, a workman is liable to be retired at the age of 60 years under FR 56(b) and not at the age of 58 years under FR 56(a). The Tribunal answered the question in negative thereby the prayer of the applicant in that OA was dismissed. In the conclusion it was held that "the duties of the Junior Engineer (Electrical) are predominantly supervisory and managerial in character and therefore it does not come within the ambit of description of 'Artisan'."

In the present case the designation of the employees in all the three OAs is Technical Supervisor (Operative). Even though they submit that they are not discharging the duties of the Supervisor and control the

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staff under them, the very fact that the designation shows that they are Technical Supervisors they are liable to give some advises and check the duties of those who are in the lower scale namely Skilled Categories and unskilled categories. Hence it is verly likely that the case of these applicants in all these three OAs resemble to be the same as the applicants in the reported cases or very likely to touch the duty list of the applicants in this OA, even if these duty lists are not fully adhering to the duty list of the applicants.

(v) In the reported case in (1991) 17 ATC 655 (Jugal Singh v. Chandigarh Administration) of the Chandigarh Bench of the Tribunal, the applicant therein was a Head Reader in the Office of the Controller of Printing and Stationery Department, Chandigarh and was drawing the salary of Rs.3263/- per month. From the salary indicated in that OA it can be presumed that he was in the scale of pay higher than the Skilled Category of Staff as per the IVth Central Pay Commission scales of pay. That OA was dismissed rejecting the contention of the applicant in that OA to retire him under FR 56(b).


The applicants in all these three OAs heavily relies on this judgment to state that the conditions laid down in this OA decide whether the applicants come under the expression "workmen" or not. The three ingredients reported in the judgment to decide whether an employee is a workman or not as per the applicants' statement, fully covers their cases. Even though that OA was dismissed by the Tribunal, they fulfil the three ingredients extracted

in para 10(ii) supra fully and hence they are entitled for retirement under FR 56(b). Whether the three ingredients indicated in the reported case applies to the applicants or not will be discussed shortly. However, it has to be noted that the application of the applicant in that OA who was Head Reader was dismissed by the Chandigarh Bench.

(vi) In the reported case in (1989) 11 ATC 41 (Rakha Singh v. Chandigarh Administration) the applicant therein was confirmed as Chargeman (Mechanical) on 19.10.79. The contention of the applicant in that OA was that he was borne on the workcharged establishment for which yearly sanction was issued by the U.T. Chandigarh Administration and hence he should be retired under FR 56(b). That OA was allowed. However, the scale of pay of the applicant in that OA was not indicated. But the OA was decided as the applicant therein was a workcharged workman.

In the present case the applicants have not stated that they are workcharged workmen. Hence the decision in that OA is not applicable to the applicants herein.

(vii) In the reported case in (1991) 18 ATC 151 (G.Azhakappan Achary v. Union of India), the short question that arose for consideration in that OA was whether the Production Centre, Ettumanoor under the Development Commissioner, Small Scale Industries, Government of India, is an industrial establishment and whether the skilled workers employed in that establishment are entitled to remain in service till attaining the age of 60 years as contemplated under FR 56(b) applicable to the Central Govt. employees. The applicants in that OA were skilled workers



Gr.II working in the Ministry of Industry, SIDO, Government of India Production Centre, Ettumanoor and the second applicant ^{was} ~~is~~ the Central Government Production Centres Employees' Association, Ettumanoor, Kerala represented by its Secretary. In that OA, the scales of pay of the applicants ^{are} ~~is~~ not given. Further, that OA was filed by the Association represented by its Secretary. It is evident that the question in that OA arose when the applicant in that OA who was employed in the industrial establishment is to be retired under FR 56(b) or not. That OA was allowed. It is pertinent to point out here that the recruitment rules of the Skilled Worker Gr.II were taken note of and on that basis the OA was decided. Here no recruitment rules of the applicants herein to the post of Technical Supervisor (Operative) which is same as the recruitment rules of the Skilled Worker in the reported case has not been made ^{available} ~~out~~. Moreover the scales of pay of the applicants in that OA ^{are} ~~was~~ not known from the facts of that case. Hence we do not consider it necessary to adhere to the decision in that OA to allow this application.

(viii) In the reported case in (1994) 27 ATC 726 (Raju Susay v. Union of India) decided by the Ernakulam Bench of the Tribunal, the applicant therein was an Offset Machineman. The post of Offset Machineman was reclassified as Master Craftsman. The scale of pay of the applicant was not given in that case. However, the word Master Craftsman fits in with the definition of the worker where applied. In view of the designation as Master Craftsman, the application would have been allowed in that case. Hence that case cannot be treated as a precedence ^{to} ~~to~~ grant

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similar relief to the applicants in this OA.

13. When the OA was admitted on 27.4.95, the Bench did not feel these cases as proper cases for granting any interim order as prayed for. However, the reasons for coming to such conclusion have been clearly spelt out in that order dated 27.4.95.

14. The main contention of the applicants in this OA is that they fulfil the three ingredients laid down in Jugal Singh's case. The first ingredient is that "they should be a highly skilled, skilled, semi-skilled or unskilled artisan". Nowhere it has been brought out that the Technical Supervisors in the grade of Rs.1600-2660/Rs.1400-2300 are highly skilled, skilled, semi-skilled or unskilled Artisans. As per the Pay Commission scales of pay, the holders of the scales of pay of Rs.1400-2300/Rs.1600-2660 are above that of the highly skilled workers. Even if they are performing the same duties which were given to them at the time of their joining while they are reaching the age of superannuation, it cannot be said that on the basis of the duty list they should be treated as workmen coming under the first ingredient in Jugal Singh's case. The duty list is only an indicative document relating to type of work performed by them. There is no rule or instruction to show that the duties performed by the applicants in these OAs cannot exceed what is given in the duty list. The respondents i.e, the Departmental authorities are fully empowered to add any duties which they feel as essential to run the Department effectively and efficiently. As stated earlier, even if the duty lists

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at Annexures A-2, A-3 and A-4 are one and the same, they cannot be treated as a conclusive proof to come to the conclusion that they come under the definition of "workmen" and their retirement age should fall under FR 56(b). This point has been very conclusively examined in the interim order dated 27.4.95 itself. It was concluded after analysing that the categories above highly skilled are not within the ambit of workman referred in FR 56(b) read with the Note thereunder. The relevant portion of the interim order dated 27.4.95 in this regard is reproduced below:-

"9. It is not in controversy that the semi skilled and unskilled artisans are in Class IV, while the skilled and highly skilled artisans are in Class III. Further the Technical Supervisors in the scale of Rs.1400-2300 and 1600-2600 are in pay scales higher to the pay scales of highly skilled Grade I.

10. It is further submitted for the respondents at the time of arguments that even if those who are in the category of unskilled, semiskilled, skilled and highly skilled in Telecom have to be held as Artisans, as the workman referred to under FR 56(b) reads ^{on} that the note therein includes only artisans from the category of unskilled to highly skilled, the categories above highly skilled are not within the ambit of workman referred to under FR 56(b) read with Note thereunder."

15. Thus, from the above decision of this Bench, it cannot be said that the applicants are fulfilling the ingredient No.1. In that view, this contention has to be

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rejected.

16. The applicant relies on the recommendations of the Second Central Pay Commission in Para 82 and 84 of the report. The recommendation of the Second Central Pay Commission is in regard to the fixation of the pay of the employees of Govt. of India. The above view is very clear if one reads Para 84 of the report minutely. These two paragraphs state that the employees who were workmen should be retired either under FR 56(a) or (b). No one can read a report out of the context and contend on that basis to give them the relief asked for. In this case, in our opinion, the applicants in these OAs have read Para 82 and 84 of the Second Central Pay Commission report without analysing the reasons for which the recommendations were made in those paragraphs. They have read these two paragraphs out of the context to benefit them for granting them the relief ^{claimed} in these OAs. Hence, we cannot give any relief on the basis of the recommendations of the Second Central Pay Commission even though it says that the Mechanics are skilled workers. These two paragraphs have to be read with in connection with the fixation of pay of Mechanic as Skilled Workers. Further, we had already held that the applicants in these OAs are not skilled workers and they are above the skilled workers and the reasons for deeming them above the skilled workers ^{are} had already been explained in the interim order dated 27.4.95, the relevant paragraphs of which ^{have} ~~had already~~ been extracted above. Hence this contention also is rejected.

17. The applicants relying on a number of judgements referred to above came to the conclusion that they are to

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be given the relief asked for in these OAs. It is seen from the reported cases analysed above that the categories mentioned therein were different. Nowhere ^{the} scale of pay is indicated. Even otherwise, the employees therein appear to be in the skilled categories and not above that of the skilled categories. The case of Junior Engineer (Electrical) whose scale of pay is above skilled category was dismissed. It has to be held that each case was analysed on its own merits to see whether the employee in the case ^{comes} ~~covers~~ under FR 56(b) for retiring him at the age of 60 years or not. No thumb rule can be applied to decide the issue. As stated earlier, the reported cases clearly reveal that there is no thumb rule or definite rule to come to the conclusion whether an employee has to be retired under FR 56(a) or (b) and each case has to be analysed on its own merit and a decision is taken. The present case can be distinguished from the cases of the employees in the reported cases supra. We have also held that the cases of the applicants do not fulfil the first ingredient ^{laid down} in Jugal Singh's case ~~laid down~~ by the Chandigarh Bench of this Tribunal. In that view, it may be possible to come to the conclusion that the relief asked for in these three OAs may not be granted. However, the Apex Court has clearly laid down the definition for artisan and also other conditions to be fulfilled for retiring the Central Govt. employees under FR 56(b) in the reported case in (1995) 29 ATC 365 (State of Orissa v. Adwait Charan Mohanty). We are of the opinion that this case is very relevant to take note of for deciding the present three OAs.

18. In the above referred reported case, the Orissa State Administrative Tribunal had held that the applicants

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in that OA who were working in the various departments of Orissa State as Draftsmen, Senior Draftsmen, Architectural Assistant Draftsman, Architectural Draftsman, Planning Assistant, Carpenter, Heavy Vehicle Driver, Mechanic, Foreman, Motor Grade Operator, Ferro Printer, Welder, Concrete Mixture Driver, Junior Machineman, Pump Mechanic, Pump Driver-cum-Mechanic etc. etc. are liable to be superannuated on attaining the age of 60 years. That was challenged by the Orissa State in the reported case. In that case, the relevant rules, mainly Rule 71(a) of Orissa Service Code was analysed. The Apex Court had come to the conclusion that "the Tribunal has committed grievous and manifest error of law in not considering the cases on hand in this perspective. It has solely and wholly concentrated on the definition of the word 'workman' and the "industrial establishment" to give the benefit of extended superannuation to the respondents." Though the interpretation of the Tribunal was found to be erroneous in the manner in retiring the applicants in those OAs to retire at the age of ⁶⁰~~58~~, it was directed by the Apex Court not to recover any pay and allowances paid to them till they are made to retire pursuant to the orders passed by the Apex Court. However, before parting with that case, the Apex Court pointed out that the cursory look into the Code would show existence of yawning gaps and ad hoc amendments are made from time to time. The Apex Court further recommended to have ^a~~a~~ fresh look and revamp the Code in the light of the developments of service jurisprudence.

19. Rule 71(a) of Orissa Service Code and Rule 56(b) of Fundamental Rules were compared by this Tribunal even

while refusing to grant the interim relief prayed for in these OAs, by the order dated 27.4.95. It is necessary at this juncture to extract the relevant Fundamental Rule and Rule 71(a) of Orissa Service Code:-

"4. FR 56(a) and the note thereunder which are relevant are as under:-

"F.R.56(a): Except as otherwise provided 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."

5. If the applicant has to be held as workman as laid down in FR 56(b), then the contention for the applicants has to be accepted.

6. In 1995(1) SCSLU 261 (State of Orissa & Others vs. Adwait Charan Mohanty); (1995) 29 ATC 365; the Apex Court had the occasion to consider the scope of Rule 71(a) of the Orissa Service Code with reference to the second proviso therein which reads as under:

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"Rule 71(a) provides superannuation which is relevant for the purpose of this case reads thus:

Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a Government servant, except a ministerial servant who was in Government service on the 31st March, 1939 and Class IV Government servant, is the date on which he or she attains the age of 58 years, subject to the condition that a review shall be conducted in respect of the Government servant in the 55th year of age in order to determine whether he/she should be allowed to remain in service upto the date of the completion of the age of 58 years or retired on completing the age of 55 years in public interest."

The second proviso reads as follows:-

"Provided further that a workman who is governed by these rules shall ordinarily be retained in service upto the age of 60 years. He may, however, be required to retire at any time after attaining the age of 55 years after being given a month's notice or month's pay in lieu thereof, on the ground of impaired health or being negligent or inefficient in the discharge of his duties. He also may retire at any time after attaining the age of 55 years, by giving one month's notice in writing.

Note: for this purpose, "a workman" means a highly skilled, skilled or semi-skilled and unskilled artisan employed on a monthly rate of pay in any Government

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establishment."

The note was subsequently amended with effect from October 13, 1989, which reads

"Note: For this purpose, "a workman" means a highly skilled, skilled, semi-skilled or unskilled artisan employed on a monthly rate of pay in any industrial or workcharged establishment."

7. It may be noted that proviso 2 to Rule 71(a) of Orissa Service Code is similar to FR 56(b). The amended note to proviso 2 of rule 71(a) of Orissa Service Code is identical with the note to FR 56(b)."

8. Rule 52(A) of Orissa Service Code was also referred to in the above judgement. After dealing with all the aspects, it was held in para 14 as under:

"As stated earlier, the object appears to be to bring artisan-workman governed by the statutory rules but at par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the gazetted or non-gazetted Class III Government servant or even in Class II or I."

20. Though the applicants state that the Note incorporated under FR 56(a) cannot be compared with that of the proviso under Rule 71(a) of the Orissa Service Code, we do not agree with the view expressed by the learned counsel for the applicants. This point had already been considered while rejecting the interim prayer vide order dated 27.4.95

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and it was held that the amended Note to proviso 2 of Rule 71(a) of the Orissa Service Code is identical with the Note to FR 56(b). Hence it is very relevant to pass an order in this case after considering the observations made by the Apex Court in the reported case considering the Orissa State rule..

21. The Apex Court held in Adwait Charan Mohanty's case cited supra that "the word 'artisan' has to be understood in common parlance in a wider sense as an artist or one employed in any of the industrial arts or produces an article of commercial value or utility with manual dexterity, either by manual labour or with the help of tools or machine and brings into existence a product for sale or service. An element of not only creativity would be applied to bring into existence an article or commercial goods with dexterity employing manual or technical labour or with the aid of tools etc. However, it is not exhaustive. Each case must be considered on its own facts and attendant circumstances to find whether the workman is an artisan". From the above observation of the Apex Court, the case of the applicants has to be seen whether it falls under the word 'artisan' to grant them the relief of retiring them at the age of 60 or not.

22. We have very exhaustively held in the previous paragraphs that the applicants cannot be brought under the skilled workers' category. There is no doubt that they are not unskilled workers. From reported cases relied^{on} by the applicants, they are not able to convincingly bring to our notice that they fulfil the requirements set out in those

reported cases. The first ingredient in the Jugal Singh's case is not fulfilled by the applicants. The other cases are not relevant since they are in the skilled category and their scales of pay have not been mentioned. Hence treating the cases of the applicants as workmen is not possible from the facts given in the reported cases. The Junior Engineer (Electrical) in CPWD does not come under FR 56(b) as per the reported judgment in (1993) 23 ATC 845.

also not eligible for retirement at the age of 60 years. The cases of the Junior Engineer and the Head Reader may be very similar to the cases of the applicants herein who are Technical Supervisors (Operative). In that view, the case of these applicants also has to be rejected. In all the other cases relied on by the applicants, all of them were appeared to be in the highly skilled grade or less and hence not relying on their cases to grant the relief in this OA may not be irrelevant.

23. The Apex Court in Adwait Charan Mohanty's case cited supra has held that, "the object appears to be to bring artisan-workman governed by the statutory rules but on par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the even in Class II or I". The relevant paragraph is reproduced below:-

"12. If the interpretations sought to be put up by the counsel for the respondents are given acceptance, it would render the very object of the rules ridiculous and



all classes of government servants would be brought into the vortex of artisan. Class III consists of gazetted as well as non-gazetted employees. The government servants in Class III shall retire on completion of 58 years. If the interpretation that every artisan is a workman if he produces an article with dexterity or service with dexterity by ~~manual or technical labour~~ he would be entitled to remain in service till the completion of 60 years. For example, even a Director of Town Planning or Chief Architect could be considered to be an artisan and, therefore, they too would be workmen entitled to superannuation up to the completion of 60 years of age. Similarly several officers in specified governmental activities would answer the definition of workman, in particular, the note to the proviso. It does not appear to be the object. As stated earlier, the object appears to be to bring artisan-workman governed by the statutory rules but on a par with Class IV employee and he alone is required to retire on completion of 60 years of age but not the gazetted or non-gazetted Class III government servants or even in Class II or I."

24. The applicants in these three OAs are no doubt non-gazetted class III servants and also appear to be in a categories very much higher than the highly skilled category and hence they cannot pray for the relief of retirement at the age of 60 years under FR 56(b). The above view is also in consonance with the Apex Court judgement reported in 1995 (2) SLJ 159 (State of West Bengal and Ors. v. Anil Kumar Ghosh and Ors) wherein it was

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observed that, "the facts show that after the applicant in that OA opted for Group-C scale and was in the scale rising beyond Rs.230/- (probably equivalent to Rs.950/- in the IVth Pay Commission scale of pay) so was not entitled to 60 years."

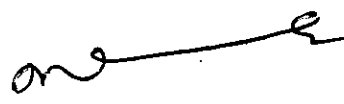
25. In view of the above that the applicants in all these three OAs have not made out a case to grant them the relief as prayed for in these OAs. Hence all the three OAs viz, OAs 376/95, 380/95 and 507/95 are liable only to be dismissed. Accordingly they are dismissed. No order as to costs.

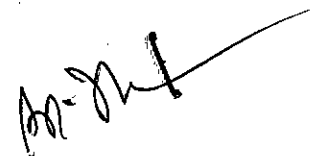

(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

5/3/98

DATED: 5th March, 1998

vsn


(R. RANGARAJAN)
MEMBER (ADMN.)


Dy. Registrar