

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDER ABAD BENCH

Original Application No. 1434, 1435, 1436, 1437 & 1438/97

DATE OF DECISION: 5-12-1997

B.S.N.Reddy & 4 Ors.

-----Petitioner(s)

Mr.P.N.A. Christian

-----Advocate for the
Petitioner(s)

Versus

U. O. I. & Ors.

-----Respondent(s)

Mr.V. Rajeswara Rao

-----Advocate for the
Respondent(s)

THE HON'BLE SHRI H. Rajendra Prasad, 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?
 2. To be referred to the Reporter or not ?
 3. Whether their Lordships wish to see the fair copy of the Judgement?
 4. Whether the Judgement is to be circulated to the other Benches?
- avl/

Judgement delivered by Hon'ble Shri H.Rajendra Prasad, M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1434, 1435, 1436,
1437 & 1438/97.

Dt. of Decision : 5 -12-97.

B.S.N.Reddy

.. Applicant in
O.A.1434/97.

D.Ramchander

.. Applicant in
O.A.1435/97.

G.P.Madhusudhan Rao

.. Applicant in
O.A.1436/97.

P.Kumaran

.. Applicant in
O.A.1437/97.

A.S.Shanker Rao

.. Applicant in
O.A.1438/97.

Vs

1. The Union of India,
Department of Atomic Energy,
Rep. by its Secretary,
New Delhi.
2. The Administrative Officer,
Nuclear Fuel Complex,
Hyderabad-500 762.
3. The Chief Executive,
Nuclear Fuel Complex,
Dept. of Atomic Energy,
Govt. of India, Moulali,
Hyderabad-500 762.

.. Respondents in
all the OAs.

Counsel for the applicant : Mr. P.N.A.Christian
(All the OAs)

Counsel for the respondents : Mr.V.Rajeswara Rao,
Addl. CGSC.
(All the OAs)

CORAM:

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (ADMN.) ~~9/3/~~

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

ORDER

ORDER (PER HON. SHRI H. RAJENDRA PRASAD: MEMBER (ADMN.)) ^{9/6/97}

The applicants herein were appointed as Drivers in Nuclear Fuel Complex as under:-

B.S.N.Reddy applicant in O.A.1434/97

(DOB : 18-10-1939) DOA 21-02-1972

D.Ramchander applicant in O.A.1435/97

(DOB : 05-04-1938) DOA : 26-02-1971

G.P.Madhusudhana Rao applicant in O.A.1436/97

(DOB : 06-02-1938) DOA : 22-02-1972

P.Kumaran applicant in O.A.1437/97

(DOB : 18-08-1939) DOA : 04-06-1970

A.S.Shankar Rao applicant in OA.1438/97

(DOB : 17-08-1938) DOA : 23-05-1979

At the time of their initial appointment, their service conditions were stated to be governed by the provisions of a Standing Order, then under finalisation. According to this, they were to retire on attaining the age of 60 years. The standing orders were later duly certified but subsequently withdrawn on the ground that the workmen under NFC are governed under FRSR, CCS(CCA) Rules, etc. Consequently, the authorities decided that the Drivers of NFC will retire on superannuation on attaining the age of 58 years. This order (Annexure-1) is under challenge in this OA.

^{9/6/97}

2. Mr.Christian, the learned counsel for the applicants submitted as under:-

(i) In the Office Memorandum of appointing the applicants against Industrial Temporary Establishment, it was clearly mentioned that the applicants were appointed in a workcharged establishment, that they were eligible for consideration for appointment against Industrial Permanent Establishment in due course, and that the applicants were moreover repeatedly referred to as 'workmen'.

(ii) It is not known to the applicants as to when exactly the Standing Orders were certified and why they were subsequently withdrawn.

(iii) The unilateral decision of the authorities to apply the FRSRs and CCS(CCA) Rules etc., was never made known to the applicants.

(iv) Even under the relevant FR., the applicants are entitled to continue in service upto 60 years of age - which, incidentally, ^{is} the relief claimed in these OAs.

(v) The issue was examined at length in OA.807/87 which was disposed of by this Bench on 21-10-89 by holding that the applicant therein, B.R.Shivaram, who was similarly situated, was entitled to continue in service till he attained the age of superannuation at 60 years and by directing the respondents to continue him in service till that age.

(vi) The judgement supra which was carried in appeal to the Hon'ble Supreme Court was dismissed on 11-05-1990.

(vii) One Shri Dhanraj, Driver Grade-II in the same organisation was allowed to continue upto the age of 60 years.

(viii) Hon'ble Supreme Court in Prithipal Singh Vs. U.O.I. (AIR 1991 SC 915) held as under:-

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"5. A driver of staff car is undoubtedly a skilled or semi-skilled person. He has to use his whole body, specially his hands and feet, to drive the vehicle. The definition of word 'artisan' is wide enough to include a driver of a car."

(ix) In the context of the facts of this case there can be little doubt that the applicants completely fulfill the definition of a workman in the light of the finding of the Hon'ble Supreme Court cited above, as also because the respondents themselves repeatedly refer to them as workmen in their appointment orders.

3. Mr.V.Rajeswara Rao, learned counsel for the respondents, contended that the case of the applicants is not covered by FR 56(b) but by comes within the purview of sub-rule (e) under the same rule, which is as under:

"(e) A government servant in Class IV service or post shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years."

assert that

The respondents, the applicants are not, and cannot claim to be, Group 'D' (Cl.IV) employees but are firmly included in Group 'C' for all purposes. They cannot as such derive the benefit of FR 56(e). This view, according to him, is upheld by the Hon'ble Supreme Court in State of Orissa and Ors. Vs. Adwait Charan Mohanty, in Civil Appeal No.1497/93, (JT 1995 (2) SC 6) wherein it was held as under:-

"15. Therefore, we are of the considered view 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. An artisan-workman who is working in an industrial or workcharged 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 Code. In this view, it is not necessary to decide whether any industrial establishment in a government department, not specified, expressly, is an industry is a factory as contended by the respondents. The Code clearly given benefit to them. One essential condition to

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be satisfied is that such an artisan-workman, be it highly skilled, skilled, semi-skilled or unskilled, must, of necessity, be on monthly pay of the government."

4. Our attention has also been drawn by the learned counsel for the Respondents to judgement in M.M.solanki Vs. U.O.I. (O.A.416/95) disposed of by the Ahmedabad Bench of this Tribunal on 19-09-1997 wherein the plea of ^{the} employee who was similarly situated was disallowed in the light of the Hon'ble Supreme Court judgement in Adwait Charan Mohanty's case referred to above.

5. The last mentioned argument of the standing counsel is contested by the applicant's counsel on the ground that Hon'ble Supreme Court was almost exclusively dealing with Rule 71(a) of the Orissa Civil Services Code and not with FRs as such. Indeed, except for a passing reference to FR 56(b) in para-11, the Apex Court did not examine the position of Fundamental Rules. In that view of the matter, the opinion of Ahmedabad Bench in M.M.Solanki (Vs. U.O.I) case, that a comparative reading of Rule 71(a) of Orissa Service Code and FR 56(b) & (e) reveals a close identity may not be totally correct.

6. This last point, viz., identity in Rule 71(a) of the Orissa Civil Service Code and FR 56(b) & (e) has been extensively dealt with and examined by the Madras Bench of this Tribunal in OA.446, 521 and 551/97 disposed of on 27-06-1997. Para-15 of the said order reads as under:-

"15. We further note that the order did not go into FR 56 which is the rule relevant to the case of the applicants before us. It may also be noted that the wording of FR 56 is not the same as Rule 71 of the Orissa State Civil Services Rules and hence not Pari Materia. Hence we are inclined to follow the guidelines already set forth by the Hon'ble Supreme Court in specific relationship to FR 56. As far as the applicants are concerned in Prithi Pal Singh Vs. UOI, the eligibility of Drivers of staff car for invoking the provision of FR 56(b) has been upheld. The only other requirement as further clarified in Chandigarh Admn; and another Vs. Ajith Singh and another, cited supra, is that the person concerned should be working on a monthly rate of pay in an industrial or work charged establishment. There is no dispute about

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the applicants drawing pay on a monthly basis. As regards their functioning in an industrial establishment the respondents have admitted that the GSO is entrusted with the responsibilities of providing transport facilities for the employees working in other units of the DAE. The definition 'industry' in the ID Act 1947 includes any service provided. Accordingly, we are unable to accept that the GSO is only an office and cannot be governed by the definition 'industry'."


We are in respectful agreement with the view expressed by the learned Division Bench of the Madras Tribunal.

7. In the light of the conclusions arrived at in OA.807/87 disposed of by this Bench and OAs.446, 521 and 551/97 of Madras Bench, we hold that the impugned order No.NFC/PA.X/1175/97 dt. 20-10-1997 (Annexure-I) cannot be sustained. The same is liable to be, and is hereby, set aside. The respondents are directed to continue the applicants in service till the A/N of the last day of the month in which they attain, respectively, the age of 60 years.

8. Pursuant to the above direction the period of absence from the duty of any of the applicants since the date of their earlier 'retirement' in , retirement till the date of their reinstatement shall be regularised by grant of suitable leave for which they may eligible, if the same is applied for by them within one week of their return to duty on reinstatement.

9. We would like to place on record the valuable assistance of Mr.M.V.Shankaran, Legal Advisor, Dept. of Atomic Energy, during the hearing of the case.

10. Thus the OAs are disposed of. No costs.


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


(H. RAJENDRA PRASAD)
MEMBER (ADMN.)

Dated : the 05 December, 1997

MD/SPR.


Deputy Registrar