

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JATPUR BENCH, JATPUR.

DATE OF ORDER: 30.1.2002

OA 207/2001

Chhagan Lal Samaria son of Shri Panna Lal aged about 62 years, resident of B-43, Vijay Nagar II, Kartarpura, Jaipur. Presently retired as Assistant Postmaster HBG, GPO, Jaipur.

....Applicant.

VERSUS

1. Union of India through the Secretary to the Government, Department of Post and Communication, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Office, Jaipur City, Jaipur.
4. Union of India through Secretary, Department of Personnel & Training, New Delhi.

....Respondents.

None present for the applicant.

Mr. B.N. Sandu, Counsel for the respondents.

CORAM

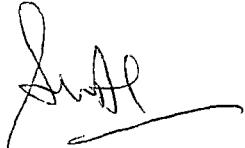
Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. H.O. Gupta, Member (Administrative)

ORDER

PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

In this Original Application filed u/s 19 of the Administrative Tribunal's Act, applicant makes a prayer to quash and set aside the order dated 29.9.2000 and to direct the



respondents to retire the applicant on 1.1.96 and to pay all consequential benefits. Directions were also sought to declare Note 7 to FR 56 as ultravirous to the Constitution being violative of Articles 14 and 16 of the Constitution of India.

2. In brief, the case of the applicant is that his date of birth is 1.1.1938 and as per normal rules, he was to retire on 31.1.1996. Respondents retired the applicant w.e.f. 31.12.1995 vide order dated 17.10.95. Applicant filed a representation for redressal of his grievance, which was also disposed of vide impugned order dated 29.9.2000. It is stated by the applicant that Note 7 below FR 56 is ultravirous to the Constitution being violative. Therefore, applicant is entitled to the relief sought for.

3. Reply was filed. In the reply, it is submitted that applicant's date of birth is 1.1.1938 and as per Note 7 below Fundamental Rule 56, provision regarding retirement are as follows :-

"A Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty-eight or sixty years, as the case may be."

As such applicant stood retired from service on the last day of the preceding month i.e. 31.12.1995 and applicant has no case. It is submitted that the recommendations of the fifth Pay Central Commission have been effective from 1.1.1996 for the Central Government Employees. Since the applicant stood retired from service on 31.12.1995 itself, he cannot be given the benefit of the recommendations of the Fifth Pay Commission. It is stated that no provision contained in Note 7 to FR 56 are any way arbitrary, discriminatory and in violation of provisions of Constitution. Therefore, applicant is not entitled to any relief sought for.



4. Heard the learned counsel for the respondents and perused the whole record.

5. As per provisions contains in Note 7 to FR 56, it has been made specific that Government servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty eight or sixty years, as the case may be. In the instant case, the date of birth of the applicant was 1.1.1938 and according to these provisions, he was to retire after completion of 58 years i.e. on 31.12.1995. Therefore, in our opinion, the respondent department has not committed any illegality, irregularity in retiring the applicant on 31.12.1995.

6. As regards the provisions contains in Note 7 to FR 56, the applicant failed to make out any case for declaring these provisions ultravirous of the Constitution. In our opinion, the provisions contained in Note 7 FR 56 are neither arbitrary nor discriminatory or in violation of provisions of Constitution. Therefore, applicant failed to make out any case for declaring these provisions ultravirous to the Constitution.

7. In view of the discussions, as above, we do not find any merit in the applicant's case and we do not find any ground to interfere in the action taken by the respondent's department. This OA is devoid of merit and we dismiss this OA as having no merit.


(H.O. GUPTA)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)