

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5

O.A. No. 160 of 1994

Date of decision 12.6.96

Sri Sudhir Ranjan Sarkar

PETITIONER(S)

Mr. J.L.Sarkar, Mr. M.Chanda.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

Mr. S.Ali, Sr. C.G.S.C.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (A).

THE HON'BLE JUSTICE SHRI D.C. VERMA, 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?

Judgement delivered by Hon'ble Member (J).

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 160 of 1994.

Date of decision : This the 12th day of June, 1996.

Hon'ble Shri G.L.Sanglyine, Member (A).

Hon'ble Justice Shri D.C.Verma, Member (J).

Shri Sudhir Ranjan Sarkar,
Son of Late Narendra Nath Sarkar
Designation - Work Assistant
In the office of the Guwahati Aviation
Subdivision No. 1,
Central Public Works Department (CPWD)
Guwahati Airport,
Guwahati.

..... Applicant

By Advocate Mr. M.Chanda.

-versus-

1. Union of India
Through The Secretary,
Govt. of India,
Central Public Works Department (CPWD)
Ministry of Urban Development,
New Delhi.
2. The Superintending Engineer,
Assam Circle,
C.P.W.D., Guwahati-21.
3. The Executive Engineer,
Assam Aviation Works Division,
C.P.W.D. Guwahati Airport,
Guwahati-15. Respondents

By Advocate Mr. S.Ali, Sr. C.G.S.C.

O R D E R

VERMA D.C., MEMBER (J).

By this O.A. applicant Sudhir Ranjan Sarkar, Work Assistant in the office of the Guwahati Aviation, Sub-Division-1, Central Public Works Department (C.P.W.D.) has claimed that the impugned notice of retirement issued under letter dated 21.67.94 under F.R. 56 (a) ~~to~~ be quashed and the respondents be directed to allow the applicant to continue to work till the applicant attains the age of 60

.....years

in terms of F.R. 56(b). The admitted fact is that the applicant was initially appointed as Work Assistant in the C.P.W.D. in the work charged establishment in the year 1957, since then he is working as such. However now the applicant has been brought to the Regular classified Establishment in a Class III (Group 'C') Non-Gazetted and Non-Ministrerial post.

2. The applicant's claim is that he being a skilled artisan is entitled to retire from service on superannuation at the age of 60 years in terms of F.R. 56(b) and not in terms of F.R. 56 (a). The base for such a claim is due to a schedule Employment list issued under the Minimum Wages Act in the year 1982 under which 9 (Nine) categories including the Work Assistant is named. According to the applicant the Principal Bench of the Tribunal in O.A. No. 399/86 Beniprasad Vs. U.O.I. decided on 29.5.91 have held that Work Assistant is Skilled Artisan and have given the benefit of F.R. 56 (b). Following the said decision, it is contended by the learned counsel for the applicant, the Cuttack Bench of the Tribunal vide its Judgement dated 23.9.93 in O.A. No. 331/93 D.K.Chatterjee VS. Union of India & Ors has also held that the petitioners therein to retire on superannuation on attainment of 60 years of age.

3. One additional contention raised by the learned counsel for the applicant is that the Central Government, Ministry of Law had referred the dispute for adjudication before the Arbitration and the Arbitrator in his award made the following observations :

During the course of oral argument the Party No.2 draw our attention that Party No. 1 is superannuating the workmen at the age of 58 years. They are entitled to be superannuated at the age of 60 years being

...the

the industrial workmen and that some categories of workmen are issued uniform and some are not on the plea of nomenclature like Work Charged. Regular Classified and Muster roll and contended that it is discriminatory treatment and in support of their contention our attention was also invited to the Government letter No. 66/339/57/WAC dated 26th March 1958 alongwith the note for consideration placed therewith (document filed by Party No. 1).

The learned counsel for the applicant contended that the matter was taken to the Hon'ble High Court and thereafter to Hon'ble Supreme Court but this observation of the Arbitrator was not disputed by the Department.

4. The respondents have filed a written statement and have stated that the applicant is not an Artisan and that the President of India was pleased to order for 9 (Nine) Nos. of categories of staff who were engaged in works fully under the schedule employment as listed in the Minimum Wages of Act (Central Rule 1950) is for the purpose of over-time work and not for the purpose of age of retirement beyond 58 years of age. It is also mentioned in the reply that the post of Work Assistant on Regular (Calssified) Establishment is a Class-III (Group C) Non-Gazetted and Non-Ministerial post. Further, that the Work Assistant job is supervisory only and is not an Artisan at all as he does not perform or does any job of an Artisan. Paragraph 7 of the C.P.W.D. Code has also been quoted. It is as below :

"This age of retirement of those who are brought on the Regular Establishment will be according to the relevant rules applicable to the Regular Establishment. The provisions applicable to the Workcharged Establishment that the age of compulsory retirement for all employees would be 60 years, will not apply to any member of Workcharged Establishment who is brought on to the Regular Establishment".



.... The

The statement made on behalf of the respondents is that the applicant is neither a Workcharged staff nor Industrial staff nor he was provided any tools or tool allowance as done in the case of Artisan. The applicant's case does not fall in F.R. 56 (b).

5. We have heard the counsel for the parties. A decision of this Bench of the Tribunal given in O.A. 31/95 (Aboni Mohan Das Vs. U.O.I & Ors.) decided on 6.12.95 has been brought to our notice in which the case decided by the Cuttack Bench (Supra) and also case decided by the Principal Bench (Supra) has been referred and distinguished. The argument now raised by the learned counsel for the applicant in this case on the basis of the Delhi High Court decision dated 28.1.92 in Writ Petition No. 2792/88 and rejection of SLP by the Hon'ble Supreme Court against the said decison was also raised in the case of Aboni Mohan Das (Supra). The said contention was not accpeted on the ground that the Arbitration Award merely contains a view expresssed by the Members. No findings has been made in the Award to treat the category of Work Assistant as skilled Workman. We are in full aggrement with the view expressed by the earlier Bench of this Tribunal, Shri G.L.Sanglyine was a Member of the earlier Bench. Also, There was no reference before the Arbitration of consider the age of retirement and the findings thereon was therefore not required in the award.

6. In the case of State of Orissa & Ors. VS. Adwait Charan Mohanty reported in 1995 (2) SLJ (SC) P 199 has been discussed at length by the earlier decision of this Bench in Aboni Mohan Das (Supra). The relevant portion of the Judgement of the Apex Court relied on in the earlier case is also quoted below :



"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 or a factory as contended by the respondents. The Code clearly gives benefit to them. One essential condition to 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."

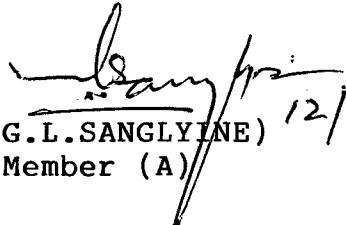
7. We are, therefore of the view that the decision of the Apex Court vide "Even an artisan-workman who was promoted or appointed to Class III service be it gazetted or non-gazetted shall retire on completion of 58 years of age" covers the case of the applicant. The applicant is, as mentioned above, a Class III service and is not in Class IV. The Principle decided in the Adwait Charan Mohanty's case (Supra) is therefore fully applicable in the case of the applicant. The applicant is therefore will retire on attaining the age of 58 years and not on attaining the age of 60 years.

8. The case of the Beniprasad (Supra - Principal Bench) was decided in the year 1991 and the case of D.K.Chatterjee (Supra - Cuttack Bench) was decided on 23.9.93. The Hon'ble Supreme Court decided the case of Adwait Charan Mohanty on 27.1.95 laying down the law with regard to superannuation of Class III employees, be it gazetted or non-gazetted.

A

In view of the discussion made above, we are of the view that the impugned order passed by the respondents to retire the applicant on superannuation at the age of 58 years under F.R. 56 (a) is in accordance with law.

The O.A. has no merit and is dismissed. Costs on the parties. Stay Order dt. 16.8.94 ~~to be~~ vacated.


(G.L. SANGLYINE) 12/6/96
Member (A)


(D.C. VERMA)
Member (J)

trd