

50/600

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 246/96

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet.....*OA*.....Pg. *1*.....to *2*.....
2. Judgment/Order dtd. *16.12.98*.....Pg. *1*.....to *4 d/bun 820*.....
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....*246/96*.....Pg. *1*.....to *3*.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S.....Pg.....to.....
8. Rejoinder.....Pg.....to.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendement Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Karls
31.11/8

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ST No. 246/96

Sri A. Patra

Applicant(s)

VS-

Union of India & ors

Respondent(s)

Mr. D. Sanjay Chandra

Advocates for the applicant(s)

Mr. S. Ali & Ors

Advocates for the Respondent(s)

Office Notes	Date	Courts' Orders
--------------	------	----------------

This application is in
form and within time
C. F. of Rs. 50/-
deposited vide
IPO/BD No 444805
Dated ... 16.10.96

16.10.96

Mr M. Chanda for the applicant.

Mr S. Ali, Sr. C.G.S.C. for the
respondents.

Heard Mr Chanda for admission and
perused the contents of the application
and relief sought. Application is
admitted. Issue notice on the
respondents by registered post. Written
statement within six weeks. List for writ-
ten statement and further order on 29.11.96.

Heard counsels on interim relief
prayer. The retirement of the applicant
in pursuance of Notice No.4585/A-
22/CGWB/NER/Estt/85 dated 27.8.1996
(Annexure-2) will be subject to the
result of this application.

Member

11/96

Notice issued to
the concerned parties

vide D. No. 3713 dt 13.11.96

trd

17/10

29-11-96

Mr. M. Chanda counsel for
the applicant. Written statement
has not been submitted.

List for written statement
and further order on 30-12-96.

Member

Service Reports are still awaited.
No statement has not been filed.

1m

29/11

Service Reports are still awaited.
No statement has not been filed.

26/12

O.A. 246 /96.

17-1-97

30.12.96

Written statement has not been filed.

Mr J.L.Sarkar for the applicant.
Mr S.Ali, Sr.C.G.S.C for the respondents.

Written statement has not been submitted.

List for written statement and further orders. on 20.1.1997.

Member

pg

14-2-97

20.1.97

1) Service reports are still awaited.

Learned counsel Mr M. Chanda for the applicant. Written statement has not been submitted.

List for written statement and further orders on 17.2.97.

Member

2) Written statement has not been filed.

3) No appearance has been filed.

14/2

pg
w/ 20/1

17.2.97

Two weeks time granted to Mr S. Ali, learned Sr. C.G.S.C., to file written statement.

This case relates to Agartala. The case will be taken up at Agartala. The date will be notified later.

Member

Vice-Chairman

9-12-98

No W/S filed.

nkm

w/ 20/2

16.12.98
(Agartala)

Heard counsel for the parties.
Hearing concluded. Judgment delivered in open Court, kept in separate sheets.

The application is dismissed. No order as to costs.

Member

Vice-Chairman

18/2/99
Copies of the Judgment issued to the parties through Regd. mail a/c vide J.No. 262-266 D.O. 28.1.99.

pg

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::GUWAHATI-5.

O.A.No. 246 of 1996.

DATE OF DECISION...16.12.1998...
(At Agartala)

!! Shri Anugrah Patra (PETITIONER(S))

Sri M.Chanda ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors. RESPONDENT(S)

Sri A.K.Choudhury, Addl.C.G.S.C ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE JUSTICE SHRI D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 246 of 1996.

Date of Order : This the 16th Day of December, 1998.

(At Agartala)

Justice Sri D.N. Baruah, Vice-Chairman.

Shri G.L. Sanglyine, Administrative Member.

Shri Anugrah Patra,
Son of late Premdarshan Khosla,
Daleshwar,
Road No. 11, Agartala-7.
Tripura.

... Applicant

By Advocate Sri M. Chanda.

- Versus -

1. Union of India
represented by the Secretary
to the Govt. of India,
Central Ground Water Board,
Ministry of Water Resources,
Shram Shakti Bhawan,
New Delhi.
2. The Chairman,
Central Ground Water Board,
Shram Shakti Bhawan,
New Delhi.
3. The Chief Engineer,
Central Ground Water Board,
NH-IV, Faridabad,
Haryana.
4. The Director (Admn.)
Central Ground Water Board,
N.H. IV, Faridabad,
Haryana.

... Respondents.

By Advocate Sri A.K. Choudhury, Addl. C.G.S.C.

O R D E R

BARUAH J. (V.C)

In this application the applicant has prayed for a direction to allow him to continue his services till he attains the age of 60 years in terms of F.R. 56(b) and also prays for setting aside the Annexure-2 impugned letter dated 27.8.1996. The facts of the case are :-

The applicant was initially appointed Cleaner in the year 1961 under Dandakaranya Development Authority

under the Government of India, Ministry of Home Affairs on regular basis and subsequently appointed Driver in the year 1973 in the same establishment till 31.10.1985. The applicant was declared surplus with effect from 1.11.1985 and he was put in the surplus cell of Government of India. The applicant was again appointed Driver in the Central Ground Water Board and posted in the unit office at Agartala. The applicant completed about 35 years of service and he attained the age of 58 years on 31.11.1996. Having come to know that the authority was going to issue a notice of retirement, he submitted a representation praying to allow him to continue in service till 60 years on the ground that he was a workman. According to the applicant as per F.R 56(b) he being a Workman he is entitled to work upto 60 years.

2. Mr. A.K. Choudhury, learned Addl. C.G.S.C on the other hand has disputed the claim of the applicant. According to him the superannuation of the applicant was governed by F.R. 56(a) and not F.R. 56(b), since a Driver is a Group C post.

3. On the rival contention of the counsel for the parties it is now to be seen whether the applicant has come within the ambit of F.R. 56(a) or (b). F.R. 56 relates to retirement. We quote F.R 56 :-

"F.R. 56(a) Except as otherwise provided in this rule, every Government servant 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."

A Driver is not a workman. Admittedly the applicant was not employed under the industrial establishment. As per Note below F.R. 56, 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. The applicant was

1X

neither employed in an industrial nor ^{in any} work charged establishment. Therefore he is not entitled to get the benefit of F.R.56(b). Mr A.K.Choudhury, learned Addl.C.G.S.C has drawn our attention to a decision of the Apex Court, State of Orissa & Ors. vs. Arnab Kumar Dutta, reported in 1996(7) SCC 203. In para 4 of the said judgment it was held as follows :-

"In the case in question this Court was called upon to decide the age of retirement of a 'workman' who as per the second proviso to Rule 71(a) of the Orissa Service Code shall ordinarily be retained in service up to the age of 60 years. In the Note appended to the proviso, it has been stated that a 'workman' means a highly skilled, skilled or semi-skilled and unskilled artisan employed on a monthly rate of pay in any Government establishment. After examining the meaning of the word 'artisan' finding place in the different dictionaries, it was held in para 12 that the object of the Rule appears to bring "artisan-workman" on a par with Class IV employees, and he alone is required to retire on the completion of 60 years of age, but not the gazetted or non-gazetted Class III government servants or even Class II or I, which would be the result if all artisans were given benefit of retention of service up to 60 years inasmuch as even a Director of Town Planning or Chief Architect could be considered to be an artisan. It was, therefore, held that among others a draftsman would not be a workman to get the benefit of retention of service up to the age of 60 years."

Similarly this Tribunal also in the case of Abani Mohan Das vs. Union of India & Ors.in O.A.No.31/95 held as follows :-

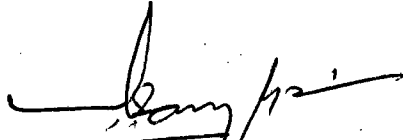
"In the light of the above decision of the Supreme Court, we are of the opinion that the applicant does not fall within the definition of artisan or industrial workman. He is not therefore entitled to get the benefit of F.R.56(b).

In our opinion the present application is squarely covered by the aforesaid O.A.No.31/95. Therefore, we hold

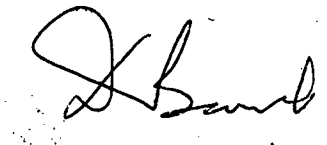
RZ

that the applicant is not entitled to get the benefit of provisions of F.R. 56(b).

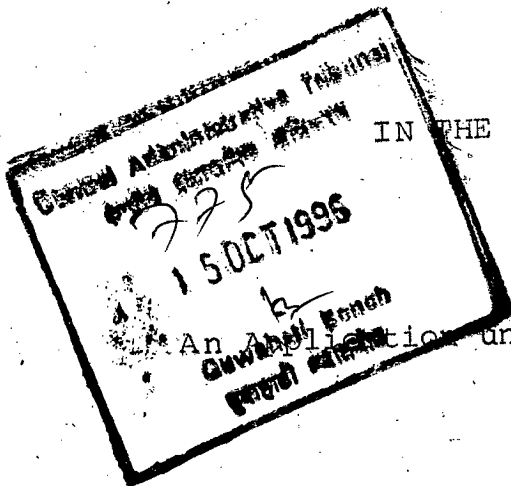
The application is dismissed. No order as to costs.



(G.L.SANGLYNE)
ADMINISTRATIVE MEMBER



(D.N.BARUAH)
VICE CHAIRMAN



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

An Application under Section 19 of the Administrative
Tribunals Act, 1985.

Filed by the applicant
through M. Chandra
14.10.96-Adv. Chandra

O.A. No. 246/96

Shri Anugrah Patra

-versus-

Union of India & Ors.

I N D E X

Sl.No.	Annexure	Particulars	Page No.
1	-	Application	1-9
2	-	Verification	10
3	1	Representation dated 12.08.96	11-12
4	2	Notice dated 27.8.96	13

Copy is handed over.
to Mr. S. Ali Sr. C.A.S.C.
① Adv.
14.10.96

Date : 14-10-96.

Filed by

M. Chandra

Advocate

Anugrah Patra

1. Particulars of the Applicant.

Sri Anugrah Patra

Son of late Premdarshan Khosla,

Daleshwar

Road No. 11, Agartala-797007

Tripura (West)

..... Applicant

2. Particulars of the Respondents.

1. The Union of India,

Through the Secretary to the Govt. of India

Central Ground Water Board,

Ministry of Water Resources,

Shram Shakti Bhawan

New Delhi.

2. The Chairman,

Central Ground Water Board,

Shram Shakti Bhawan,

New Delhi.

3. The Chief Engineer,

Central Ground Water Board,

NH-IV, Faridabad

Haryana

4. The Director (Admn.)

Central Ground Water Board,

N.H.IV, Faridabad

Haryana

..... Respondents

Contd.....P/3

Anugrah Patra

3. Particulars for which this application is made.

This application is made regarding pre-mature retirement at the age of 58 years of service and also against the notice of retirement issued under letter No. A-22/CGWB/NER/Estt/85 dated 27.8.96 whereby the applicant is sought to be retired on completion of 58 years of age and also with the prayer for a direction upon the respondents to allow him to continue his service till 60 years of age on the ground that the applicant falls under F.R. 56(b) of the F.R.S.R.

4. Limitation

That the applicant declare that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

5. ~~xxxxxx~~ Jurisdiction of the Tribunal.

That the applicant further declares that the subject matter of the instant application is within the jurisdiction of this Hon'ble Tribunal.

6. Facts of the case

6.1 That the applicant is a citizen of India and as such he is entitled to the rights and privileges and protections as guaranteed under the Constitution of India.

6.2 That the applicant was initially appointed as cleaner in the year 1961 under the Dandakarayana Development Authority under the Government of India, Ministry of Home Affairs on regular basis. However the applicant

Contd...P/4

Anugrah Patel

was appointed as Driver on regular basis in the year 1973 in the said Dandakarayana Development Authority. The applicant served there continuously as driver till 31.10.1985 with full satisfaction to all concerned.

6.3 That your applicant was declared surplus with effect from 1.11.1985 and the applicant was brought in the surplus cell of Government of India. However the applicant was again re-deployed as driver in the Central Ground Water Board, Government of India, Ministry of Water Resources and he was posted in the office of the Director, Central Ground Water Board (in short CGWB) North Eastern Region, Guwahati with effect from 7.1.1986. The applicant was transferred and posted in the ~~xxxx~~State unit office, CGWB under the Officer-in-Charge, CGWB State Unit Dhaleswar, Road No. 11 Agartala 797007, Tripura (West) and presently serving as driver in the said Unit Office at Agartala.

6.4 That your applicant has completed in total 35 years of service by now and is going to attain 58 years of age on 31.10.1996. The applicant came to know from a reliable source that the authorities is processing his retirement papers and likely to issue the notice of retirement asking the applicant to retire on 31.10.1996. The applicant on receipt of this information submitted a representation before the Secretary, Government of India, Ministry of Water Resources New Delhi through proper channel on 12.8.96 praying for allow to continue him to continue in service till attaining the age of 60 years of age i.e. on 31.10.1998. It is also stated

Contd..P/5

Anugrah Palre

in the said representation that the applicant being workman as defined ~~in~~ under Section (b) of F.R. 56 of F.R.S.R. as he is serving as a motor vehicle driver is entitled to be retired on superannuation on attaining the age of 60 years i.e. on 31.10.1998 and it is also stated that the applicant came to know that the Director of CGWB, NER is, going to retire him on attaining the age of 58 years of age on 31.10.96. The applicant also ~~stated~~ ^{cited} in his representation two decisions of the Hon'ble Supreme Court reported AIR 1991 SC 276 (S.P. Dhubey Vs. M.S. S.R.T Corporation) and Chandigarh Administration Vs. Ajit Singh and Others reported in AIR 1992 SC 1586 which supports the case of the applicant for allowing him to continue in service till attaining the age of 60 years. In this connection the applicant stated in the said representation that since the age of retirement in the Dandakarayana Development Authority was 60 years where he was initially appointed therefore he is entitled to retire on superannuation only at the age of 60 years even though he is declared surplus and subsequently absorbed in the another organisation of the Central Government.

A copy of the representation dated 12.8.96 is annexed as Annexure-1.

6.5 That your applicant begs to state that it is specifically stated in the Fundamental Rule that a workman who governed by this rule shall retire from service on the afternoon of the last day of month in which he attains the age of 60 years. The relevant portion of F.R. 56(b) is quoted below :

Contd....P/6

Anugrah Palva

" (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."

From above; it is quite clear that the applicant is highly skilled workman and therefore he is entitled to retire on attaining the age of 60 years of age. In view of the F.R. 56(b) the impugned notice of pre-mature retirement on superannuation dated 27.8.96 is liable to be set aside and quashed. Copy of the retirement notice dt. 27.8.96 is annexed as Annexure-2.

88.

6.6 That the applicant begs to state that retirement age of the applicant was 60 years while appointed under the Dandakarayana Development Authority therefore the applicant is entitled to serve till he is attaining the 60 years of age although he was declared surplus and subsequently absorbed under the present respondents. Moreover, the applicant is a skilled worker totally covered under F.R. 56(b) therefore ~~xxx~~ he is also entitled to be retired on superannuation at the age of 60 years.

The applicant also urged to produce the appointment letter of the applicant issued by the Dandakarayana Development Authority at the time of hearing.

6.7 That this application is made bonafide and for the cause of justice.

Contd...P/7

Anurag Palva

7. Reliefs sought for :

Under the facts and circumstances stated above the applicant prays for the following reliefs :

1. That the respondents be directed to allow the applicant to continue to work till the applicant attaining the age of 60 years in terms of F.R. 56(b) i.e. upto 31.10.1998.
2. The Hon'ble Tribunal be pleased to set aside the impugned retirement notice issued under letter No.4585/A-22/CGWB/NER/Estt/85 (Annexure-2) dated 27.8.1996 be set aside and quashed.
3. To pass any other order or orders as deemed fit and proper under the facts and circumstances as stated above.

The above reliefs are prayed on the following amongst other ~~grounds~~

- G R O U N D S -

1. For that the applicant is a highly skilled Worker falls under the category of F.R. 56(b) therefore entitled to be retired on superannuation on attaining the age of 60 years.
2. For that the applicant the initial appointment under the Dandakarayana Development Authority, Govt. of India where he was entitled to retire on superannuation at the age of 60 years.

Contd..P/8

Anugrah Pal

3. For that the impugned notice is served upon the applicant in terms of F.R.56(a) for retiring on superannuation at the age of 58 years whereas the service of the applicant is governed by the F.R. 56(b) where the provision of 60 years of service laid down in the case of Highly skilled artisan which is applicable in the instant case of the applicant.
4. For that the representation of the applicant has not been considered by the authorities.
5. For that the decision of the Hon'ble Supreme Court referred in the representation also support the case of the present applicant.

8. Interim Reliefs prayed for :

During the pendency of the application the applicant prays for the following reliefs :

1. That the applicant be allowed to continue to work as Driver till attaining the age of 60 years of age in terms of F.R. 56(b) i.e. up to 31.10.1998.

The above reliefs are prayed on the grounds explained in paragraph 7 of this application.

9. Details of remedy exhausted.

There is no any other remedy save and except filing this application before Your Lordship praying for appropriate relief.

Contd...

Anugrah Pal

10. Matter not pending in any court/tribunal.

The applicant declares that he has not filed any application in any Court/Tribunal.

11. Particulars of the postal order.

Postal Order No. : 444805

Date of Issue : 15-10-96.

Issued from : G.P.O., Guwahati

Payable at : G.P.O., Guwahati

12. Details of Index :

And Index showing the particulars of documents are enclosed.

13. List of enclosures :

As per Index.

Verification

Amarendra Pal

V E R I F I C A T I O N

I, Sri Anugrah Patra, son of late Premdarshan Khosla, aged about 58 years, resident of Daleswar, working as driver in the C.G.W.D. Department do hereby declare that the statements made in this application are true to my knowledge and belief and I have not suppressed any material facts.

I, sign this verification on this the 15th day of October, 1996.

Anugrah Patra

Signature

Annexure-1

To

The Secretary to the Govt. of India,
Ministry of Water Resources,
Shrama Shakti Bhavan
Rafi Marg, New Delhi.

(Through Proper Channel)

Sub: Superannuation of Sri A.G. Patra, MTD, CCWB, SUO, Agartala
at the age of 60 years instead of 58 years.

Respected Sir,

Most respectfully and humbly, I prefer this
humble appeal for favour of kind consideration of my following
grievance:

1. That, the fact of my case is that, I was promoted as a Driver in the Dandakaranya Project in March, 1973 from the post of Cleaner in which I was appointed in October, 1961 and being declared surplus by the said Project under Union Home Ministry on 31.12.85 on redeployment, I joined in CGWB, NER, Guwahati on 1.7.86 and then transfer to CGWB SUO, Agartala on March 1987.
2. That, being a workmen as defined in Section (b) of FR 56 as I am performing duties as a driver. I am entitled to be retired on attaining the age of 60 years, i.e. on 31.10.98 but as I understand the Director of Central Groundwater Board North Eastern Region, Guwahati-5 is going to retire me on attaining the age of 58 years on 31.10.96.
3. That, in this connection, I beg to enclose copies of two decision of Hon'ble Supreme Court in (i) S.P. Dubey Vrs. M.SRT Corporation (AIR 1991 SC-276) and (ii) Chandigarh Administration Vs. Ajit Singh & another (AIR 1992 SC-1586). In the first case, the Hon'ble Supreme Court has decided the principal that, the Age of retirement as prescribed in the original Department will also be applicable to an employee who is absorbed in another department on being declared surplus and the age prescribed in the department in which the employee is absorbed will not be applicable. In my

Contd..

Amugrah Patra

*Accepted
Cmhr
AN*

case the age of 60 years is followed in the Dandakaranya project, so in my present department, I am to be retired only on attaining 60 years.

The second case as cited above the Hon'ble Supreme Court held that, to give effect to FR 56 (b) to retire on employee at the age of 60 as workmen, the nature of duty is the sole criteris. My nature of duty is driving the vehicle and being a driver I am a workman for the purpose of Fr 56(b) and as such, I am to be retired only on attaining age of 60 i.e. on 31.10.1998.

In the above circumstances I pray, that order, may be passed such before 31.10.96, so that my immediate authority may not retire me on 31.10.96 and for this I shall remain ever grateful.

Agartala
the 12.8.96

Yours faithfully,
Sd/- Illegible 12.08.96
(A.G.Patra)
M.T.D. CGWB, SUO
Agartala

Advance copy sent to :-

The Chief Hydrologist, Central Ground Water, Board
NH-IV, Faridabad-121001 (Haryana).

The Director Administration with copies of two judgements for favour of taking decision to retire me on 31.10.98 for which I shall remain ever grateful.

Sd/- Illegible 12.8.96
(A.G.Patra)
MTD.

Attended
Duly
AIV

Amogh Patra

REGISTERED WITH A/D

No. 4585/A-22/CGWB/NER/Estt/85
Government of India
Central Ground Water Board
North Eastern Region,
Tarun Nagar, Bye Lane-1
Guwahati-781005

Dated the 27 AUG 1996

To

Shri A.G. Patra, MTD,
Central Ground Water Board,
C/o Shri A.D. Baniya,
D.N.K. Colony
Korapur,
Pin-764020, Orissa

Sub : Pension papers completion on superannuation/retirement
- regarding.

Sir,

As per Govt. records, you are liable to be retired from service on superannuation w.e.f. 31.10.96 (AN). Pension papers are required to be completed at least six/eight months before retirement. You are therefore requested to complete the following papers/forms and submitted the same alongwith its supported enclosures latest by 16.9.96 positively, so that the pension papers can be submitted to Pay & Accounts Officer, CGWB, NH-IV Faridabad, for further necessary action.

Encl :-

1. Appendix-D form (4 copies)
2. Forms-3
3. Forms-5

Yours faithfully,

Sd/-

(U. GOGOI)
SCIENTIST-C
for Director

Copy to :-

The Officer-In charge, CGWB, SUO, Agartala alongwith a copy of the enclosures as above is enclosed herewith for the similar action.

Sd/- Illegible
(U. GOGOI)
SCIENTIST-C
for Director

Amogh Patra

*Atch - 11-11-96
G. S. Chatterjee
Adv*