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Central Administrative Tribunal, Principal Bench

Original Application No. 2769 of 2003
M.A.No. 2420/2003

New Delhi, this the 19th day of April, 2004

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. R.K. Upadhyaya, Member (A)

1. D.S. Verma
F1/151, Gali No.2
(Nasirpur Road),
Mahaveer Enclave, Palam,
New Delhi-45

2. Sukhdev Singh,
B-G6/114A,
Paschim Vihar,
New Delhi

3. L.M. Singh,
Sr.A.M.E.,
Palam, New Delhi

4. Surjan Singh,
Senior Air Craft Mechanic
5/90, Opp. Hongri Babai Temple,
Govind Puri Moti Nagar,
Ghaziabad

....Applicants

(By Advocate: Mrs. Prashanti Prasad)

Versus

1. Union of India,
Ministry of Home Affairs,
Represented
through its Secretary,
Ministry of Home Affairs,
New Delhi

2. Director General,
Border Security Force, Block No. 10,
5th Floor
CGO Complex, Lodhi Road,
New Delhi

3. Deputy Inspector General (Personnel)
Dte. of Border Security Force,
Block No.10, 5th Floor,
CGO Complex, Lodhi Road,
New Delhi

....Respondents

(By Advocate: Shri Surendra Kumar)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicants are retired persons from Indian



Air Force. They were re-employed in the civilian posts of the Border Security Force (BSF). Suffice to say that the applicants were re-employed in the posts of Senior Air Craft Mechanic in the pay scale of Rs.2000-3200 in accordance with the then prevalent Recruitment Rules. The controversy raised in the present matter is as to whether the age of superannuation of the applicants would be 57 years or it would be 60 years.

2. The petition has been contested.

3. Our attention has been drawn towards the two decisions of this Tribunal in the case of B.N. Chaubey and others vs. Union of India and others (O.A. 837/2003) decided on 18.8.2003 and another in the case of V.P. Sharma vs. Union of India and others (O.A. 611/2003) decided on 3.10.2003. When a similar controversy had been raised, this Tribunal on both the occasions had quashed the impugned orders and had directed that the said applicants would be taken back in service and their age of superannuation should as it would be in case of a civilian employee.

4. On behalf of respondents, however, strong reliance is being placed on the decision of the Delhi High Court in the case of M.S. Malik vs. The Director General, BSF (C.W. No.622/2002) decided on 28.7.2002.

5. We do not dispute that if the decision of the Delhi High Court is applicable, it would bind this

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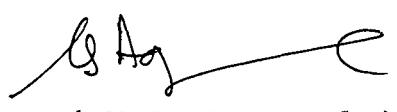
Tribunal. However in the cited case, the petitioner was appointed as a Draftsman, Grade-II (Civilian) in non-combatised stream. He joined BSF in the Engineering Set-up of BSF Headquarters. He was promoted as a Draftsman Grade-I. In 1993, Shri M.S. Malik opted for a newly created temporary post of Subedar-Major (Draftsman) which was a combatised post. It is on basis of these facts that the Delhi High Court held that the petition was without merit and dismissed the same. Perusal of the cited decision clearly shows that it was not a case of BSF Air Wing as in the present case, which has a different set of Recruitment Rules. Herein, no option was exercised as had been done in the case of M.S. Malik. Therefore, the decision in the cited case is clearly distinguishable.

6. We subscribe to the earlier view taken by this Tribunal in the case of B.N. Chaubey and V.P. Sharma (supra).

7. Resultantly, we allow the present application and quash the impugned orders. It is directed that the age of superannuation of the applicants shall be 60 years.


(R.K. Upadhyaya)

Member (A)


(V.S. Aggarwal)
Chairman

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