
(1998) 05 DEL CK 0106
In the Delhi High Court
Case No : C.W.P. 2722 of 1995

Achhar Singh

APPELLANT

Vs

M.C.D. and Another

RESPONDENT

Date of Decision : 01-05-1998

Acts Referred:

Citation : (1998) 5 AD 34 : (1998) 73 DLT 529 : (1998) 46 DRJ 199

Hon'ble Judges : M.S.A. Siddiqui, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. Rajeev Sharma, for the Appellant; Mr. V.K. Goel, for the Respondent

Judgement

M.S.A. Siddiqui, J.—The challenge in this writ petition under Article 226 of the Constitution of India is to the order dated 6.4.1995 (Annexure-4) issued by respondent No.2 retiring the petitioner from the municipal service on his attaining the age of superannuation of 58 years on 31st July,1995.

2. The petitioner's grievance is that he was employed as Generator Operator in the category of Group "C" post and he was required to perform manual work with the skill as a consequence he was entitled to remain in service until he attained age of superannuation of 60 years under Clause (b) of Rule 56 of the Fundamental Rules, but he was wrongfully denied the benefit of the said provision.

3. The only question for consideration is whether a Generator Operator is covered under F.R.56(b). In *Hat Ram Gauri Vs. MCD and Ors.* 1993 (4) Delhi Law 384, a Full Bench of this Court has held that "for purposes of coverage under F.R.56(b), a workman has to be an artisan, skilled or otherwise but one who is predominantly engaged in manual work". In his affidavit dated 27-2-1998, Mr.A.E. Chug, Executive Engineer (Electrical-II) has specified the duties of the petitioner as a Generator Operator. His duties were as under:

(i) He was cleaning the filter and as such cleaning the Generating Set.

(ii) He had to handle the small Generator. In case of failure of A.M.F.panel, he had to start the Generator manually.

(iii) He had to put diesel in the Generator and had to maintain the level of diesel in Generating Set.

(iv) He had to check water level in the Radiator of the Generator.

(v) He had to take care of the batteries for self-starting of Generator and to check the water level in the batteries of the Generator.

(vi) He had to check the voltage and current from the Generator.

(vii) He had to take care of output voltage and to regulate the same.

(viii) He had to take care of charging of the batteries.

4. From the nature of the duties which a Generator Operator has to perform, it cannot be disputed that substantial part of his work consisted of operating and maintaining generating set manually. His work was neither managerial nor supervisory in nature so as to exclude him from the category of semi-skilled or skilled worker. As an operator of the generating set, the petitioner had to use his skill and technical ability to perform the major part of his duties. In Mohd. Sulemani Vs. MCD and Anr. (C.W.P. No. 4531/95 decided on 11-3-1997 by a Division Bench of this Court), an ortho-technician was held to be governed by F.R.56(b).

5. Having regard to the nature of duties to be performed by a generator operator, we are of the opinion that the petitioner's case was fully covered by the provisions of Fundamental Rules 56(b) and as a consequence he was entitled to be retained in service till he attained the age of 60 years. In this view of the matter, the petitioner must be treated as deemed to have been in service till he attained the age of superannuation of 60 years. It follows that the petitioner was also entitled to receive his salary and all consequential benefits till he attained the age of 60 years.

6. For the foregoing reasons, the order dated 6.4.1995 retiring the petitioner on his attaining the age of 58 years with effect from 31.7.1995 is hereby set aside. The respondents are directed to pay the petitioner's salary and all consequential benefits till he attained the age of 60 years. The petitioner shall also have his costs, which are quantified at Rs.1,000/-.