

Union of India and Others

Vs

Bhola Dutt Pandey

Civil Appeal No. 3439 of 1990

(K. Vankataswami, A. P. Mishra JJ)

03.03.1998

ORDER

1. This appeal by special leave is preferred against the judgment of the Madhya Pradesh High Court, Jabalpur Bench, dated 6-3-1990 in MP No. 823 of 1988.

2. The respondent was employed after retirement from military service in the service of Indo-Tibetan Border Police (ITBP) by order dated 3-11-1979. Under the terms and conditions of the said employment offer, it was expressly stipulated that his service will be governed by Rule 16 of the CRPF Rules and that other conditions of service will be governed under the provisions of the Central Reserve Police Force Act and Rules. It is also stated in the order of employment in para 5 as follows :

"If Ex-Army Nn/Sub-Clerk Bhola Dutt is prepared to accept the post of Jem/Clerk in ITB Police on the terms and conditions mentioned above, he should report for duty to the Commandant BTC, ITB Police, Kulu (Sabeli), H.P. on or before 1-12-1979 (1st December, 1979). If he fails to report for duty by that date this offer will be treated as cancelled."

3. Accepting the terms and conditions, the respondent joined the ITBP Service.

4. Notwithstanding such express terms in the contract of employment, the respondent approached the High Court claiming that he should be superannuated only at 58 by placing reliance on certain Standing Orders issued by the Ministry of Home Affairs, in particular the Standing Orders dated 1-9-1965 and 1-11-1975. The High Court accepting the case of the respondent that those Standing Orders support his claim, found that the superannuation age of the respondent must be fixed at 58 instead of 55 which is the age fixed under Rule 43 of the Central Reserve Police Force Rules, 1955.

5. The appellant is aggrieved by the view taken by the High Court fixing the superannuation age of the respondent, who was re-employed after retirement from the Army, at 58, overlooking the terms and conditions of the order of employment.

6. We heard learned counsel on both sides and we have gone through the judgment of the High Court as well as the relevant Rules.

7. We are of the view that the High Court was not right in holding that the Standing Orders referred to and relied on by the respondent will apply to the facts of this case. As we have noticed, the contract of employment specifically refers to CRPF Rules, 1955 which covers the retirement age as

well.

8. In view of that, the order of the High Court cannot be sustained. Accordingly, the same is set aside and the appeal is allowed. Consequently, MP No. 823 of 1988 filed by the respondent before the High Court stands dismissed. There shall be no order as to costs.