



Central Administrative Tribunal
Principal Bench, New Delhi

OA No.2919/2016

Reserved on: 20.02.2020
Pronounced on: 16.03.2020

Hon'ble Ms. Aradhana Johri, Member (A)

S.L. Srivastava, Retd. Addl. CPFC,
Aged about 68 years
S/o Late Sh. Sunder Lal Srivastava,
R/o 1201, Sec.28, Faridabad,
Haryana.

...Applicant

(By Advocate: Sh. M.K. Bhardwaj)

Versus

Union of India through:

1. Secretary,
Govt. of India,
Ministry of Labour & Employment/
Shram aur Rozgar Mantralaya,
New Delhi.
2. Central Provident Fund Commissioner,
EPFO,
14, Bhikaji Cama Place,
Bhavishya Nidhi Bhawan,
New Delhi – 110 066.

...Respondents

(By Advocate: Sh. Rajive R. Raj for R-1
Sh. Keshav Mohan for R-2)

O R D E R

The applicant joined the respondent organization – Employees Provident Fund Organization [hereinafter referred to as EPFO] and after some promotions he became Additional Central Provident Fund Commissioner [hereinafter referred to as Additional CPFC]. In the seniority list that was published in 1989 his date of birth

was shown as 17.08.1948 on the basis of his Matriculation Certificate. However, he protested claiming his date of birth to be 12.11.1952 and the respondents accepted the same and made necessary corrections. These corrections were reversed in 2003 after which there was litigation and eventually a writ petition was instituted before the Hon'ble Allahabad High Court which passed orders for filing of a Civil Suit. In the said Civil Suit, while his date of birth was adjudged to be 12.11.1952, the relief of a direction for correction of the date of birth in the Matriculation Certificate was refused primarily on the ground that the period stipulated by the Regulations of the School Board for such correction was over. Accordingly, the suit was dismissed.

2. On the basis of the date of birth declared by the Civil Court, the applicant made a representation for grant of consequential relief which was refused by the respondents. The applicant filed OA No.858-HR of 2006 which was dismissed vide order dated 08.08.2007. While dismissing the OA, the Tribunal took the view that the Civil Court decree did not bind the Provident Fund Organization as the said Organization was not a defendant to the suit. The Tribunal also took the view that under the Regulations in force of the School Board conducting the matriculation

examination, at the relevant point of time, the minimum age to appear in the matriculation examination was 15 years which made it impossible for the applicant to appear in the said examination in the year 1965 if his date of birth was to be 12.11.1952.

3. Aggrieved by this order, the applicant filed Civil Writ Petition No.16114-CAT of 2007 before the Hon'ble High Court which dismissed the Petition on 15.10.2007. No appeal was filed by him against this order. Subsequently, without mentioning the details of the proceedings before the Tribunal and the Hon'ble High Court, the applicant represented to his employer for acceptance of his date of birth as 12.11.1952 on the basis of which a letter was issued on 25.08.2008 by the Under Secretary, Ministry of Labour and Employment, Government of India recommending acceptance of the claimed date of birth of the applicant. Thereafter, order dated 28.08.2008 was passed by the Regional Provident Fund Commissioner-II (HRM-I) changing the date of birth of the applicant from 17.08.1948 to 12.11.1952.

4. Thereafter a PIL vide CWP No.10686 of 2009 was filed before the Hon'ble High Court of Punjab & Haryana at Chandigarh. By order dated 14.01.2011, the Hon'ble High Court of Punjab & Haryana set aside the order dated

28.08.2008. The effect of this order was that the date of birth of the applicant came to be 17.08.1948. The respondents issued order dated 09.06.2011, which reads as under:-

*“No.HRM-I/ 18-7(B)2009/Vol.II/226 dated 09.06.2011
OFFICE ORDER*

The order No.HRM-I/A-10(101)87/Vol.V/Pt./29547-20747 dated 28.08.2008 regarding change in date of birth in respect of Sh. S.L. Srivastava, from 17.08.1948 to 12.11.1952 is withdrawn. His date of retirement is restored to 31.08.2008.

2. Consequently Sh. S.L. Srivastava stands retired w.e.f. 31.08.2008 (AN). He stands relieved with immediate effect.

3. Sh. N.K. Prasad, Additional CPFC (UP & Bihar) will hold the charge of ACC (WB, NER & JH) in addition to his present assignment till further orders.

(Authority: Ministry of Labour & Employment letter No.S-38016/80/2009-SS-I dated 28.06.2011).

*Sd/-
(S.R. Joshi)
Additional Central P.F. Commissioner (HR)*

To

- 1. Sh. S.L. Srivastava, ACC, Kolkata (WB, NER, JH)*
- 2. Sh. N.K. Prasad, ACC, Kanur (UP & Bihar)...*

5. The applicant had been issued charge-memo dated 31.05.2011 for major penalty. This was challenged by the applicant before this Tribunal by way of OA No.2742/2012 which passed orders on 28.11.2014 quashing the said memo on the grounds that the applicant stood retired on 31.08.2008 and this Memo was subsequent to that. On 28.06.2005, CBI had registered a criminal case

No.RC14(5)/ 2005=SCU-I/CBI/SCR.I/New Delhi against the applicant under the Prevention of Corruption Act in that he was found to possess assets disproportionate to his known source of income. During the investigation of the aforesaid case, the CBI on 30.06.2005 conducted a raid at the office and residence of the applicant. After completing the investigation, CBI filed a charge sheet before the competent court to the effect that the applicant was in possession of assets hugely disproportionate to his known source of income to the tune of Rs.60,12,292/-, CBI accordingly recommended sanction of prosecution. Prosecution sanction was granted by the Central Government on 09.09.2009. This criminal case is said to be still pending.

6. The applicant has averred that since he was being treated as retired on 31.08.2008, on that date he did not face any criminal case or disciplinary proceedings. Therefore, all his pensionary dues including full pension, gratuity, commuted value of pension etc. should be paid to him. He has further prayed that the pensionary benefits should be calculated as per the pay drawn by him on 09.06.2011. He has also made a claim for grant of non-functional grade which, according to him, fell due during

the period from 2008-2011. He has claimed 9 days salary (from 01.06.2011 to 09.06.2011).

7. The respondents have denied the claims of the applicant. They have pointed out that the applicant has preferred SLP Nos.16437-16440 of 2011 before the Hon'ble Apex Court which have been converted into Civil Appeal Nos. 385-388 of 2012 and vide order dated 06.03.2014 these appeals were listed for final hearing. Since the matter under consideration before the Hon'ble Apex Court is that of the date of birth of the applicant, the outcome of the aforesaid Civil Appeals would have a direct bearing on the present case. The respondents have urged that this is one of the grounds for dismissal of the OA. The other grounds are that disciplinary proceedings and criminal trial under the provisions of Prevention of Corruption Act were pending on the date of retirement of the applicant i.e. 09.06.2011. They have also tried to justify the basis for fixation of provisional pension which is being paid to the applicant.

8. Heard Sh. M.K. Bhardwaj, learned counsel for the applicant, Sh. Rajive R. Raj, learned counsel for the respondent no.1 and Sh. Keshav Mohan, learned counsel for respondent no.2.

9. At the heart of the matter is the issue of what is to be treated as the date of birth and consequently the date of retirement of the applicant, since the claims of both sides flow from this date.

10. This matter is under adjudication by the Hon'ble Apex Court and is said to be at the stage of final hearing. Hence, this case is accordingly adjourned sine die till the decision of the Hon'ble Apex Court.

(Aradhana Johri)
Member (A)

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