



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/00372/2020

(Order reserved on 18.01.2021)

Chandigarh, this the 5th day of February, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Sohan Lal, age 62 years S/o Late Sh. Chuni Lal, Retired Mason (Daily Wage), Resident of House No. 13, Phase-2, Ram Darbar, U.T. Chandigarh-160002 "Group D"

.....Applicant

By Advocate: Mr. Barjesh Mittal

Versus

1. Union Territory, Chandigarh Administration through Secretary, Engineering Department, U.T. Civil Secretariat, Sector 9-D, Chandigarh-160009.
2. Chief Engineer, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh-160009.
3. Executive Engineer, Capital Project division No.2 (Roads), U.T. Chandigarh Administration, U.T. Civil Secretariat, Sector-9, Chandigarh-160009.
4. Sub Divisional Engineer, Construction Sub division No. 10, Sector-26, Chadnigarh-160019.
5. Accountant General (A&E) Punjab & U.T. Chandigarh, Plot No. 20, Sector-17/E, Chandighr-160017.

.....Respondents

By Advocate: Mr. V. K. Arya for respondents No. 1-4
Mr. I.S. Sidhu for respondent No.5



ORDER
AJANTA DAYALAN, Member (A)

1. The present OA has been filed by the applicant Sohan Lal seeking quashing of the impugned order dated 12.5.2020/3.6.2020 (Annexure A-1) ordering recovery of an amount of Rs.3,90,969/- on account of excess salary drawn by him. The applicant has also sought quashing of order dated 16.9.2019 (Annexure A-2) to the extent of ante-dating his date of retirement as 31.10.2016 instead of 31.10.2018.

2. I have heard the opposing counsels and have also gone through the pleadings of the case. I have also given my thoughtful consideration to the entire matter.

3. Essentially, the present case is that the applicant initially started working with the CP Division No.3 in Chandigarh Administration as daily wage worker w.e.f. 1.11.1989. He was transferred to C.P.Division No.2 (Road), Chandigarh during 2006-2008. Posts of Mason became available in Construction Circle-II, Chandigarh. The particulars of applicant alongwith other daily wagers were sent to Executive Engineer, C.P. Division No.3, Chandigarh vide letter dated 29.3.2016 (Annexure A-4) for regularization of their services. In this communication, the date of birth of the applicant is mentioned as 05.04.1969. However, vide letter dated 26.6.2018 (Annexure A-5), the applicant was informed that as per office record his date of birth was 1.11.1958. And as such, he was to be retired w.e.f. 31.10.2016 on attaining the age of 58 years. He was relieved from Government service w.e.f. 30.6.2018. After some correspondence, the applicant was asked vide impugned communications dated 12.5.2020 and 3.6.2020 (Annexure A-1)



directing him to deposit the excess salary drawn by him for the period from 1.11.2016 to 30.5.2018 amounting to Rs.3,90,969/- immediately.

4. The case of the applicant is that the respondents have no right to make recovery from the applicant for the period from 1.11.2016 to 30.5.2018 as he actually worked during this period though he was retired on 31.10.2016. He has also pleaded his date of retirement to be taken as 31.10.2018 on attaining 60 years of age, based on his date of birth to be 1.11.1958.

5. The respondents have stated that the applicant was working as Mason – Group C category and as per Rule 3.26(a)(i) of Punjab Civil Services Rules, age of retirement shall be 58 years in case of Group A, B and C employees. The seniority list dated 28.2.2014, 27.5.2014 and 17.2.2014 (Annexures R-6, R-7 and R-8) clearly show the date of birth of the applicant as 1.11.1958.

6. I observe that as per letter dated 26.6.2018 (Annexure A-5) from SDE, Construction Sub Division No.10, Chandigarh, the date of birth of applicant is stated to be 1.11.1958 as per their record. This is from Division where the applicant has worked since 2006-2008. The Identity Card (Annexure A-6) also shows this date of birth. The Permanent Account Number and Adhard Card (Annexure A-7) also indicate his date of birth as 1.11.1958. The seniority lists maintained from 2014 onwards show his date of birth as 1.11.1958. Even the applicant himself in his prayer is showing his date of birth as 1.11.1958. Thus, there is no dispute that the date of birth of the applicant is 1.11.1958. As the age of retirement as per PCS Rules quoted above is 58 years and not 60 years as claimed by



the applicant, he has to retire on 31.10.2016. So, the action of the respondents in retiring the applicant on 31.10.2016 is correct.

7. However, the applicant was allowed to work upto 30.6.2018 by the respondents. It is vide order dated 26.6.2018 that he was informed that he was to retire from service w.e.f. 31.10.2016 (Annexure A-5) and overpayment has also been ordered for the period beyond 31.10.2016.

8. Despite the fact that the date of birth of the applicant as per department's own record and in various seniority lists maintained by them is 1.11.1958, the respondents have allowed him to continue to work upto 30.6.2018. No explanation in this connection on behalf of the respondents has been given by them. This was a serious lapse on the part of the respondent department. There does not seem to be any element of concealment attached to the applicant as per pleadings in the O.A. Hence, any adverse repercussions of this lapse of the respondents cannot be passed on to the applicant.

9. Also, I observe that the applicant has actually continued working beyond 31.10.2016 upto 30.6.2018 - that is for over one and half years. Now, in 2020, recovery amounting to Rs.3,90,969/- has been ordered from him for this period. This is despite the fact that he has in fact performed his duties in the office of the respondent during this period. The recovery is on account of excess wages paid to him. As discussed earlier, the respondents themselves are responsible for continuing the applicant beyond his due date of retirement. There is no allegation of mis-statement on the part of the applicant. In fact, the seniority lists maintained by the department right



from 2014 onwards show the date of birth of the applicant as 1.11.1958. Moreover, the fact of his actually having worked in the department from November 2016 to June 2018 is not denied by the respondents themselves.

10. In view of all above, I do not consider that the order of the respondents for making recovery of Rs.3,90,969/- for the period from 1.11.2016 to 30.6.2018 when the applicant actually worked with the office of respondent is at all reasonable. At this stage, after his having actually performed services for over one and a half year that too at the lowest level of daily wage mason, I consider it extremely harsh now to recover excess wages paid to him after his predated retirement.

11. In view of above, the OA is partly allowed. The recovery against the applicant on account of excess wages is waived. The impugned order dated 12.5.2020/3.6.2020 (Annexure A-1) and order dated 16.9.2019 (Annexure A-2) are quashed and set aside to the extent of ordering recovery of Rs.3,90,969/-. The respondents are directed to release the admissible retirement benefits, if any, of the applicant by taking his date of retirement as 31.10.2016, within two months from the date of receipt of a certified copy of this order.

12. However, there shall be no order as to costs.

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh
Dated: 05.02.2021

HC*