



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/390/2020

(Order reserved on 18.01.2021)

Chandigarh, this the 1st day of February, 2021

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

Sundram s/o Sh. Pirumal, age 66 years, Retired Daily Wage Worker, O/o Estate Office, U.T. Chandigarh, r/o House No. 3986, Mauli Jagran Complex, UT Chandigarh. "GroupD"

.....Applicant

By Advocate: Mr. Barjesh Mittal

Versus

1. Union Territory, Chandigarh Administration through its Deputy Commissioner, U.T. Chandigarh Administration, Estate Office Building, Sector - 17, Chandigarh-160 017.
2. Estate Officer, U.T. Chandigarh, Estate Office Building, Sector-17, Chandigarh-160 017.
3. Accountant General (A&E) Punjab and U.T. Chandigarh, Plot No. 20, Sector-17/E, Chandigarh-160 017.

.....Respondents

By Advocate: Mr. Vinay Gupta for respondents No. 1-2
Mr. I.S. Sidhu for respondent No.3

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Sundram seeking quashing of the impugned order dated 01.06.2020 (Annexure A-1) ordering recovery of an amount of Rs. 8,11,597/- on account of excess wages and gratuity. The



applicant has also sought quashing of order dated 07.08.2019 to the extent of ante-dating his date of retirement as 30.09.2005 instead of 31.08.2013.

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 was initially working with the CP Division (Roads) in Chandigarh Administration as daily wage worker w.e.f. 09.09.1982 till 14.07.1997. In 1997, his services were permanently transferred to Estate Office and he was retired on 31.08.2013. He was not given any pension or retiral benefits except gratuity. He filed an OA in 2018 in this Tribunal. The Tribunal directed the respondents to consider his case for regularization and grant him consequential benefits as expeditiously as possible. In compliance of this order, the Estate Office sought information from CP Division (Roads). This was supplied vide CP Division letter dated 21.06.2019. In this, the CP Division (Roads) indicated that the date of birth of the applicant is 13.09.1945. On getting this information and in compliance of this Tribunal's order, the Estate Office regularized the applicant on 29.09.2005 that is one day prior to his date of superannuation as per this later information. As the respondents had already allowed the applicant to continue working till 2013 and had retired him only in September 2013, they ordered recovery of wages and gratuity amounting to Rs. 8,11,597/- . The respondents have also alleged that the applicant was allowed to continue working in Estate



Office till 2013 based on the false affidavit given by the applicant where he has shown his date of birth as 01.09.1953.

4. I observe that as per Annexure R-2 which is a reference from CP Division (Roads) to Estate Office, the date of birth of the applicant is clearly shown as 13.09.1945.

5. During arguments, this Bench desired to know the basis on which the date of birth of the applicant has been indicated as 13.09.1945 by the CP Division (Roads). This Bench basically wanted to know the record sent by CP Division (Roads) to Estate Office at the time of transfer of the applicant. It is also important to know this to establish whether at the time of transfer of the applicant to Estate Office, it was informed of the date of birth of the applicant or not. This is relevant to understand whether the onus of continuing the applicant beyond his due date of superannuation, if that is the case, lies with the applicant or with the respondent department.

6. The respondents have placed certain additional documents on record. These include letter dated 21.01.2021 of CP Division (Roads) whereby they have again reiterated the same information as earlier regarding date of birth of the applicant. They have also confirmed that the applicant was paid regularly while he was working in the Engineering Department. They have further stated that no separate record file of the applicant is being maintained in their office. There is another endorsement whereby some daily wage workers have been permanently transferred and placed at the disposal of the Estate Office. This is dated 03.07.1997. Here, the name of the



applicant Sundram appears at Sr. No. 24. However, no date of birth is indicated therein. There is also a tentative joint seniority list of daily wage workers attached with the additional documents now supplied. These do indicate date of birth in case of applicant which is clearly exhibited as 13.09.1945. From these repeated submissions of the CP Division (Roads), it is clear that as per their record, the date of birth of the applicant is 13.09.1945 only.

7. However, what is not clear is whether the seniority lists were supplied to Estate Office at the time of transfer of the employees from the Engineering Wing to Estate Wing. If these were not supplied, the Estate Wing would normally be unaware of the date of birth of these workers. The order transferring the services of the daily wage workers and placing them at the disposal of the Estate Office does not indicate date of birth of any such employee at all. As such, it cannot conclusively be stated whether the date of birth as existed in the Engineering Wing was ever informed to the Estate Office at the time of their transfer. Even thereafter, till 2019, on record there is no communication in this regard from the Engineering Wing to the Estate Office. As such, it can be presumed that till 2019, the Estate Office was not aware of the correct date of birth of the applicant. This may not have been so relevant at that point of time as the applicant was only a daily wage worker in the Engineering Wing and continued in the same position in the Estate Office. It was only after this Tribunal's order directing regularization of services of such daily wage workers that the date of birth of these daily wage workers



became much more relevant. As the order of this Tribunal was passed only in January 2019, the respondent department apparently started working only thereafter to find out the actual date of birth from the Engineering Wing as per their records and it was then that the fact of date of birth of the applicant being 13.09.1945 and not 01.09.1953 became known to the Estate Office. Consequently, the Estate Office regularized the applicant on 29.09.2005 and retired him on 30.09.2005.

8. It is clear that the Estate Office was not vigilant and did not take any action on its part to ascertain correct date of birth of permanently transferred employees even till 2013 when the applicant retired. It is possible that it was because correct date of birth was not so much relevant at that point of time as at that point of time, these employees were only daily wager workers and a decision needed to be taken only to the extent of whether to continue them as such or not. Other benefits like pension and other retiral benefits were not involved. Hence, to this extent, they went by the affidavit given by the applicant himself. However, this action on part of the Estate Office in not asking the correct date of birth of their workers even for such a long period right from 1997 onwards is not correct at all. In case of regularization, all these facts became relevant. In any case, in the seniority list maintained by CP Division, the date of birth of the employees was available. However, the Estate Office chose not to take any efforts to collect these basic details for a long number of years.



9. The affidavit of the applicant has been attached in the OA as Annexure R-1. Here, the applicant has clearly stated that his date of birth is 01.09.1953. This has been sworn by the applicant in the court of Executive Magistrate. This date of birth, however, clearly clashes with the date of birth of 13.09.1945 maintained in the CP Division (Roads). However, I also note that this affidavit also states that the applicant is illiterate. He has also not signed on this affidavit. Only his thumb impression is there. There is no signature of witness and no statement of the contents of the affidavit having been read over to him. In these circumstances, this affidavit basically has no value. It can however not be said with certainty whether he was deliberately lying or the affidavit has been signed by him under misrepresentation or misunderstanding.

10. I observe that the applicant was initially engaged by CP Division (Roads) Chandigarh. His date of birth as per their record is undisputedly 13.09.1945. This is not only proved by their various references to Estate Office, but is also substantiated by the seniority lists of daily wage workers maintained by them. It was only in 1997 that is almost 15 years after his initial engagement that he was permanently transferred to the Estate Office. The Estate Office has no record of its own to show the date of birth of the applicant. They simply went by the affidavit of the applicant himself where the date of birth has been shown to be 1953 by the applicant. Taking the affidavit of the employee himself for ascertaining his correct date of birth is itself a very weak basis. Besides, there are weaknesses in the



affidavit given by the applicant as discussed in paragraph above. As such, basically, no ground at all is made out in the OA to ignore the date of birth of the applicant as 1945 which is the record of the department where the applicant worked for almost fifteen years after his initial engagement there. This is the record of that division maintained in the ordinary course of its business. It is a record not exclusively for the applicant but for other daily wage workers/causal labourers as well. As such, this court has no reason to doubt the genuineness and correctness of this record. Hence, the correct date of birth of the applicant is taken to be 13.09.1945 as indicated by the CP Division (Roads) Chandigarh based on records maintained by it.

11. On the other hand, I observe that the applicant has actually continued working from 2005 till 2013 that is for almost eight years. Now, in 2020, a recovery has been ordered from him amounting to over Rs. 8 lakhs for this period when he has in fact performed his services in the Estate Office. The recovery is for excess wages and gratuity paid to him. The applicant is the lowest level worker and is admittedly illiterate. As such, to expect him to keep a correct record of his date of birth is not reasonable. Moreover, the fact of his actually serving the department from 2005 to 2013 is not denied even by the respondents themselves.

12. In view of all above, I do not consider that the order of the respondents making recovery of over Rs. 8 lakhs for the period from 2005 to 2013 when he actually worked with the Estate Office is at all reasonable. Even if I admit that the



affidavit given by the applicant was false, the same affidavit itself specifically states that he is an illiterate. Even otherwise, the department is not expected to go exclusively by the affidavits given by the workers/employees especially on such crucial issues like date of birth. They could have sought some more substantive proof even earlier while the applicant was still working. At this belated stage, after his having actually performed services for almost eight years and that too at the lowest level of daily wage worker/labourer, I consider it extremely harsh now to recover excess wages and gratuity paid, at this belated stage seven years after his retirement.

13. In view of above, the OA is partly allowed. The impugned order dated 07.08.2019 retiring the applicant w.e.f. 30.09.2005 is upheld. However, the impugned order dated 01.06.2020 (Annexure A-1) is set aside. The recovery against the applicant on account of excess wages and gratuity is waived. However, there shall be no order as to costs.

**(Ajanta Dayalan)
Member (A)**

Place: Chandigarh
Dated: February 1st , 2021
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