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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 609 of 2010

Gandiba BehraApplicant

Vs

UOI & Ors. Respondents

1. Order dated: 6th July, 2011.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (ADMN.)

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Facts which are not in dispute are that on 01-04-1968 the Applicant (Gandiba Behra) joined as Extra Departmental/Gramin Dak Sevak Mail Deliverer (in short ED/GDS MD) in the Md. Nagar EDBO in account with Amarda SO under the Balasore Division. While continuing as such, he was promoted to Gr. D cadre of the Department post in which cadre he joined on 25.5.1999. Since his date of birth is 29.6.1948 on attaining the age of retirement of 60 years, he superannuated from service on 30.6.2008. After his retirement, he was sanctioned gratuity, Leave encashment etc. There is no provision for pension for EDAs/GDSs employees after their retirement. But payment of pension after retirement to a regular Gr. D employee of the Department was/is available only on completion of ten years regular/qualifying service in the post. As the Applicant was short of the ten years qualifying service he was not sanctioned the pension except service gratuity which had been paid to him as per Rule 49 and 50 of CCS 1972. This has been challenged by the Applicant in this OA on the ground that there is no reason not to take into consideration such of the short periods from the service of ED/GDS. The Respondents in their counter have shown their helpless condition as Rule does not permit to do so.

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2. Heard Learned Counsel for both sides and perused the materials placed on record. Admittedly Applicant is in employment as ED/GDS MD w.e.f. 1.4.1968 and on promotion he joined in the Gr. D post of the postal Department on 25.5.1999 and retired from service on 30.6.2008. But for the shortfall of the period of ten years as Gr. D employee of the Postal Department he has been debarred from getting his pension. Similar matter came up for consideration in this Tribunal in OA No. O.A No. 310 of 2010 (Shri Gouranga Ch. Sahoo -vs- UOI and others) in which placing reliance on the decision of the Hon'ble High Court of Chennai, this Tribunal directed the Respondents/Postal Department to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service of the Applicant and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt of copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents were free to recover the interest amount from the officer who would be found responsible for causing delay in payment. Relevant portion of the order is quoted herein below:

“4. Heard Learned Counsel for both sides and perused the materials placed on record. Admitted fact of the matter is that ten years qualifying service is a mandatory requirement for granting pension and pensionary benefits after retirement and if it is held that the applicant is not entitled to count the strike period and the training period towards qualifying service, the applicant is short of qualifying service to get pension and pensionary benefits. No record has been produced by the Applicant that the strike period has been regularized by the Respondents nor has he produced any Rule or Government of India instruction or law in support of his stand that the

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training period ought to have been taken into consideration for the purpose of counting the qualifying service of an employee although conscience says that when the applicant was sent for in-service training the training period ought not to have been excluded for counting towards qualifying service. Be that as it may, without going into the above controversy of the matter, as it appears from Annexure-A/10, the Madras Bench of the Tribunal held/directed the Respondents/Postal Department to consider a scheme by giving weightage for certain percentage of service rendered as an ED Agent for reckoning the same as a qualifying service for the purposes of pension in respect of persons who get absorbed or promoted against regular Group D posts in the Department which would enable such employees to get the minimum Pension. The Department challenged the said order of the Madras Bench of the Tribunal before the Hon'ble High Court, Chennai in WP No.45465 of 2007/WPMP No.66391 of 2007. The Hon'ble High Court of Madras while upholding the order of the Madras Bench of the Tribunal directed sanctioning at least the minimum pension by bringing the shortfall of service from ED employment. Being aggrieved by the said order, the Respondent-Department of Posts filed appeal before the Hon'ble Apex Court and the Hon'ble Apex Court in order dated 17.10.2008 dismissed the appeal preferred against the aforesaid order. In compliance of the aforesaid order, the DOP&T issued instruction dated 99-3/08-Pen dated 09-10-2009 in the light of the decision, as aforesaid. This position has not been disputed by the Respondents in their letter of rejection or even counter but have stated that since that case relating to Mr.M.R.Palaniswamy applicant therein, the benefit of the said decision or order cannot be extended to the Applicant. This logic of the Respondent-Department cannot stand in the eyes of law because it is trite law that as a benevolent employer, the authority cannot create a situation compelling each and every employee to approach the Court for the same relief as has been granted to another employee on the same subject. Once a judgment had attained finality, it could not be termed as wrong, and its benefit ought to have been extended to other similarly situated persons (Ref: **Maharaj Krishan Bhatt and Another Vs State of Jammu and Kashmir and others** (2008) 2 SCC (L&S) 783). In view of the law propounded above, the applicant is entitled to the benefit as has been extended to Mr.Palaniswamy (surpa). Hence, Respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service of the Applicant and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.

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5. In the result, for the reasons recorded above, this OA stands allowed to the extent stated above by leaving the parties to bear their own costs."

3. It is not the case of the Respondents that the above order of this Tribunal has meanwhile been reviewed or reversed by any higher court. In view of the above, I find no justifiable reason to deviate from the view already taken by this Tribunal in the case of Gouranga Ch. Sahoo (Supra). Hence the Respondents are hereby directed to bring such of the shortfall period of service from the ED employment of the Applicant to count for the purpose of minimum period of ten years qualifying service and accordingly sanction and pay the pension and pensionary benefits to the Applicant from the date of his retirement forthwith preferably within a period of 60(sixty) days from the date of receipt copy of this order; failing which, the Applicant shall be entitled to 6% interest on the arrear pension and pensionary dues from the date of his retirement till actual payment is made and the Respondents are free to recover the interest amount from the officer who would be found responsible for causing delay in payment.

4. For the reasons discussed above, this OA stands allowed to the extent stated above. No costs.


(C.R. MOHAPATRA)
Member (Admn.)