13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 937 of 2010
Cuttack, this the 30th day of April, 2014

Shri Giria @ Giridhari Sahoo ..... Applicant

Versus

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?

2. Whether it be referred to PB for circulation?

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judicial)

14

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 937 of 2010
Cuttack, this the 30th day of April, 2014

CORAM
THE HON'BLE MR.A.K.PATNAIK, MEMBMER (JUDICIAL)
THE HON'BLE MR. R.C.MISRA, MEMBER (ADMN.)

.....

Shri Giria @ Giridhari Sahoo,
aged about 68 years,
Son of Late Madei Sahoo,
Village: Sanakulei, PO:Tarava,
PS.Sadar,District: Dhenkanal,
Orissa.

.....Applicant

(Legal Practitioner – M/s.Ramanath Acharya, Basudev Barik)

-V e r s u s-

1. Union of India represented through the General Manager,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar.

2. The FA & CAO, Pension,
East Coast Railways,
Chandrasekharpur,
Bhubaneswar.

3. The Divisional Manager,
East Coast Railways,
Khurda Road, Jatni,
Dist. Khurda.

4. The Senior Divisional Personnel Officer,
East Cost Railways,
Khurda Road, Jatni,
Dist. Khurda.

.....Respondents

(Legal practitioner – Mr. R.N.Pal)

ORDER

A.K.PATNAIK, MEMBER (JUDICIAL):

The case of the Applicant, in brief, is that initially he joined the railway on casual basis on 24.09.1967. He was regularized in the post of Casual Worker on 07.06.1983 and while working as such, he retired from service on reaching the age of superannuation on 31.07.2001. Respondents sanctioned and paid the gratuity, pension and all other pensionary dues/benefits to him by taking into consideration 50% of service from the date of conferment of temporary status till regularization and 100% from the date of regularization till retirement though he was entitled to the said benefits by taking into consideration 100% of service from the date of conferment of temporary status till retirement. Further case of the Applicant is that although he was entitled to gratuity for the casual period of service till conferment of temporary status as per the Gratuity Act, 1972 the same was not paid to him. It has been stated that on 03.01.2006 (i.e. after expiry of near about five years) he has submitted representation praying for sanction of the gratuity for the casual period of service but the Respondents have paid deaf ear to the said representation and having received no reply he has made another representation on 11.04.2009 (i.e. after expiry of near about three years of his first representation) which was also not replied by the Respondents. It has been stated that being aggrieved by such in action of the Respondents he has filed the instant OA on 23rd December, 2010 (i.e. after expiry of near about eight years) praying for the following reliefs:

> "1. The scale of pay of the applicant may kindly be revised @ Rs.9000/- w.e.f. 01.01.1996 with increment and post retirement benefit accrued thereof;

2. The DCRG which has been released may be revised calculated for the entire period of service including casual period of service i.e. from 24.09.1967 to 06.06.1983 and compensation may be paid with interest @ 18% per annum w.e.f. 01.08.2001;
3. Pension should be revised and it may be fixed w.e.f. 01.08.2001 according to 5th Pay Commission's Rules."

2. Respondents filed their counter controverting the stand taken by the Applicant in his Original Application. It has been stated that as per the service record the applicant was initially engaged as casual Gang Man on authorized pay scale of Rs.70-85/- on 24.09.1967 and also got the temporary status with effect from the said date i.e. 24.09.1967. He was regularized w.e.f. 07.06.1983. Subsequently he was promoted to the post of Senior Track Man and Head Track Man and while working as such, on reaching the age of superannuation he retired from service w.e.f. 31.7.2001. Based on the qualifying service of 25 years 11 months (say 26 years) (by taking into consideration of 50% service from the date of conferment of temporary status i.e. w.e.f. 24.9.1967 till regularization i.e. on 07.06.1983 and 100% service from the date of regularization till retirement) the applicant was sanctioned and paid his gratuity, CGEGIS, Leave Salary DCRG pension and all other pensionary dues to which he was entitled to as per Rules and extant instructions available in the field. It has been stated that there was no wrong in granting the pay scale to the applicant w.e.f. 1.1.1996 and the pay which the applicant wishes to be fixed is on presumption and imaginary and as such he is not entitled to the same. Further by filing copy of the RBE No. 130/2000 dated 19.7.2000 it has been stated that the applicant has been sanctioned and paid the gratuity as per the RBE No.

130/2000. In fact the applicant has been conferred temporary status from the date he was engaged on casual basis in the railway. By stating so, besides on merit the Respondents have prayed for dismissal of this OA on the ground of limitation.

3. Despite sufficient opportunity and lapse of time from the date of receipt of counter, no rejoinder has been filed by the Applicant.

4. Heard Mr.R.N.Acharya, Learned Counsel for the Applicant and Mr. R.N.Pal, Learned Panel Counsel for the Railway/Respondents and perused the records.

5. Mr.Acharya submitted that as per the Gratuity Act, 1972, the applicant is entitled to gratuity for the period of service rendered by him on casual basis. His second limb of submission is that calculation of 50% service from the date of temporary status till regularization is illegal, arbitrary and illogical and, therefore, the applicant is entitled to gratuity and pension and all other pensionary benefits by taking into consideration 100% period of service from the date of temporary status till retirement which having not been done, the Respondents should be directed to recalculate the entire period of service of the applicant in the above manner and pay him the differential amount with interest within a stipulated period.

On the other hand, Mr. Pal, strongly opposed the aforesaid argument advanced by Mr.Acharya. In this connection by drawing our attention to the provisions contained in the Railway Board's instructions enclosed to the counter with regard to counting the period of service for the purpose of sanction of retirement benefits including gratuity he contended that the arguments advanced by Mr. Acharya is fallacious being based

contrary to the Rules. It has been stated that the Respondents have calculated the period of service in the manner provided in the Rules and paid the benefit to the applicant which he was entitled to under the Rules. Further by placing reliance on the decision of the Hon'ble Apex Court in the case of **Allahabad Bank Vrs Canara Bank,** reported in AIR 2000 SC 1535 (para-38, 39 and 40) it has been contended by him that when there is a specific Rules providing the manner of calculation of the period of service for payment of gratuity to a railway employee and special law having overriding effect on the general law, Gratuity Act, 1972 has no application. Accordingly, Mr. Pal has prayed for dismissal of this OA.

6. We have considered the rival contentions advanced by respective parties with reference to the pleadings and materials placed in support thereof.

7. Law is well settled in a plethora of judicial pronouncements that prayer without pleadings , pleading without specific prayer and pleadings without supporting document are not be entertained. Some of the decisions of the Hon'ble Apex Court, in the above context, are stated herein below:

In **Manoharlal (Dead) by LRs vs.Ugrasen (Dead) by LRs and others,** (2010) 11 SCC 557, the Apex Court in para 34 has held as under:

> "34. In view of the above, law on the issue can be summarised that the court cannot grant a relief which has not been specifically prayed by the parties. ....."

In **Rajasthan Pradesh Vidya Samiti, Sardarsahar and another vs Union of India and others** (2010) 12 SCC 609, the Apex Court has held in para-12 as under:

> "15. It is settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. In Bharat Singh & Ors. Vs. State of Haryana & Ors., AIR 1988 SC 2181, this Court has observed as under:-
>
> > "In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

In **M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh**, AIR 2001 SC 1684, the Apex Court held as under:-

> "The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

In **The National Textile Corporation Ltd. vs. Nareshkumar Badrikumar Jagad and others** 2011 (10) Scale 28, the Apex Court has held in paragraphs 7 to 13 has held as under:

> " 7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that

20

"as a rule relief not founded on the pleadings should not be granted". A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."

In **Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors.**, AIR 1987 SC 1242, the Apex Court held as under:

"..... in the absence of pleadings, evidence if any, produced by the parties cannot be considered.....no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it."

In **Kashi Nath (Dead) through L.Rs. v. Jaganath**, (2003) 8 SCC 740, the Apex Court held that "where the evidence is not in line of the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon.

In **Syed and Company & Ors. v. State of Jammu & Kashmir & Ors.,** 1995 Supp (4) SCC 422, this Court held as under:

"Without specific pleadings in that regard, evidence could not be led in since it is settled principle of law that no amount of evidence can be looked unless there is a pleading. Therefore, without amendment of the pleadings merely trying to lead evidence is not permissible."

8. In the case in hand we find no pleadings not to speak of any document in support of the relief claimed by the applicant in Column 8.1 & 2 are concerned. On being asked, Mr.Acharya did not make any submission on the said relief.

9. Similarly, Mr.Acharya did not controvert the fact that the applicant joined the railway on casual basis on 24.09.1967 and got the temporary status w.e.f. 24.09.1967 the said date in other words, he had not

worked a single day on casual basis so as to be entitled to gratuity for the casual period of service as per Gratuity Act, 1972. Estt. Sl. No.125/2000/RBE No. 130/2000 (No.P/ENB/30/GA/72/1 dated 19.7.2-2000) provides as under:

> "2. Though the provisions of the Payment of Gratuity Act, 1972 shall continue to be applicable to the casual labour for the purpose of calculating gratuity for the period of casual labour service upto the date preceding the date of absorption, it has now been decided by the Board that such of the casual labouir who continued to be in service and were/are absorbed against regular vacancies, shall be allowed to exercise an option as under:- (i)Payment of Gratuity under the provisions of the Payment of Gratuity Act, 1972 for the period of service upto the date proceeding the date of absorption and for payment of gratuity and pension for the period of regular service under the provisions of the Railway Services (Pension) Rules, 1992; **OR** (ii) to payment of gratuity and pension counting half of the service rendered in temporary status and full service rendered on regular basis under the provisions of the Railway Service (Pension) Rules, 1993, besides gratuity under PG Act for the period preceding the attaining of temporary status."

10. Besides the above, Railway Board instructions produced by the Respondents clearly provide counting 50% of service for the purpose of qualifying service for sanction of pension and gratuity etc. The above provision has not been challenged by the Applicant, if according to him; the same is in any manner illegal, arbitrary and offends the provision enshrined in Articles 14 and 16 of the Constitution of India. It is not for this Tribunal to decide the manner of calculation of the period or for grant of particular scale of pay to a particular class of employees. It is for the Executive, as a matter of policy to decide.

11. We will fail in our duty if we do not express our opinion on the point of limitation as canvassed by the Respondents in their counter. We are conscious that fixation and payment of pay and pension is a recurring cause

of action yet we may state that the Tribunal has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. A court is not expected to give indulgence to such indolent persons – who compete with 'Kumbhakarna' or for that matter 'Rip Van Winkle'. In our considered opinion, such delay does not deserve any indulgence. No reason not to speak of sufficient reason has been assigned for approaching this Tribunal belatedly. But we do not like to express any final opinion on this point when the applicant fails to establish his right on merit.

(Ref: **Basawaraj & Anr Vrs The Spl. Land Acquisition Officer,** AIR 2014 SC 746 (paras 7, 9 and 15) and **Chennai Metropolitan Water Supply and Sewerage Board and others Vrs T.T.Murali Babu**, AIR 2014 SC 1141 (para -16)).

12. The above being the position of Rule and law, we find no substance on any of the arguments advanced by Mr. Acharya, Learned Counsel for the Applicant rather we find sufficient force on the arguments advanced by Mr. Pal and accordingly hold that this OA fails. Accordingly, the OA stands dismissed by leaving the parties to bear their own costs.

(R.C.MISRA)
Member (Admn.)

(A.K.PATNAIK)
Member (Judicial)