

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA 1

Date of Decision:- 14.11.2008

Registration No. OA-611 of 1996

1. Sri D.M. Goswami, Son of Late Amar Nath Goswami, resident of the Village - Lengra Piper, P.O. Domchanch, P.S. Koderma, Distt. Hazaribagh, at present Compounder, Central Hospital, B.C.C.L., Katras, District Dhanbad.
2. Sri Ramu Mahto, Son of Late Thakur Mahto, Dresser, Central Hospital, B.C.C.L., Katras, District Dhanbad
3. Miss April Horrow, Daughter of late Halen Horrow, Staff Nurse, Central Hospital, B.C.C.L., Katras, District Dhanbad

... Applicants

- By Shri R.K. Jha, Advocate

Versus

1. The Union of India represented through the Secretary, Ministry of Energy (Department of Coal), Shastri Bhawan, New Delhi.
2. The Officer on Special Duty, Government of India, Ministry of Energy, Department of Coal, Kalyan Bhawan, P.O. Jagjiwan Nagar, Dhanbad.
3. The Personnel Officer (Admn.), Office of the Officer on Special Duty, Kalyan Bhawan, P.O. Jagjiwan Nagar, District Dhanbad

..... Respondents

- By Shri D.K. Jha, Additional Standing

Counsel 

*Ad*  
Coram:- Hon'ble Shri L.R.K. Prasad, Member (Administrative)  
Hon'ble Shri Lakshman Jha, Member (Judicial)

ORDER

Hon'ble Shri Lakshman Jha, Member (Judicial):-

1. The applicants, D.N. Goswami, Ramu Mahto,

and Miss April Horrow, were appointed as Cleaner, and Ward and Kitchen servant, Midwife, Rs 70-85

or as 110-155/- on

9.11.66, 5.4.65 and 25.8.71, respectively by the Medical Superintendent, Central Hospital, Dhanbad, in the Coal Mines Labour Welfare Organisation (for short CMLWO). The applicant Nos.1 & 2 were promoted as Dresser (Rs 180-210) on and from 28.11.1973 and 5.12.73 respectively. All the three applicants were declared quasi-permanent with effect from 28.11.76, 5.12.76 and 25.8.74, respectively as at Annexure-A and Annexure-A-1. The aforesaid Coal Mines Labour Welfare Organisation (CMLWO) was merged into the Bharat Coking Coal Limited (for short, BCCL) on and from 1.3.1983, and the applicants became the employees of the BCCL. The basic pay of the applicants Nos.1 & 2 in the BCCL was fixed at Rs.567/- with effect from 1.3.83, and that of the applicant No.3 was fixed in the higher scale. They continued to work in the BCCL and are due to retire in 2003 and 2006 respectively.

2. It is stated that all the three applicants completed more than 10 years of service in the then CMLWO under the Central Government, and, as such, were eligible to be granted pension in terms of the Central Pension Rules. Most of the similarly situated employees were granted pension, but, the representations of the applicants were rejected on the ground that the cases of employees of Ex-CMLWO, who have not been confirmed would be regularised as per the order contained in the department of Coal's letter dated 9.1.85, i.e., they would be entitled to Provident Fund contribution by the Government at the usual rate of 8.33% for the period of their services under Government with simple interest at the rate of 2% per

per annum at the opening balance of their CPF account with concerned Coal Company as at Annexure-A-2, read with Annexure-A-3. It is the case of the applicants that they were appointed against the permanent vacancy and they should have been deemed to be confirmed even if no such letter of confirmation was issued due to administrative laches. Therefore, non-consideration of their case for payment of pro rata pension is unjust and discriminatory.

3. The applicants jointly filed O.A. No.592 of 1993 before this Tribunal for consideration of the relief of pro rata pensionary benefit. This Bench, vide its order dated 29.1.96, passed order that the Respondents should consider the issue of confirmation in the basic grade of the applicants and if considered as confirmed, the pension as admissible be granted and in case it was not feasible to so consider and grant pension, the Respondent No.1 should state so in a reasoned order, as at Annexure-A-4. The applicants filed representations along with a copy of the order dated 29.1.96(Annexure-A-4) to the respondents which were rejected on the ground that the case of the confirmation of the applicant would not be considered as the posts held by them were not permanent on 28.2.83, as at Annexures-A-5 and A-5A. It is stated that the case of the applicants is on similar footing as that of Ram Bhajan Singh decided vide order dated 29.1.96, passed in OA-585 of 1992, by this Bench and who has been allowed his pensionary benefits, and also <sup>as</sup> that of Shri M.S. Prasad decided by this Bench in OA-320/93. The case of Shri M.S. Prasad travelled to the Hon'ble Supreme Court in SLP(Civil) No. 10822 of 1995. The Hon'ble Supreme Court held the applicant entitled to the pensionary benefits as he had not received any amount of contributory provident fund from the Government nor did he so claim. The applicants had not received the contributory

provident fund from the Government and there is no question of confirmation for grant of pro rata pensionary benefits to the applicants in the facts and circumstances as stated above. Hence, the prayer for relief for grant of pro-rata pensionary benefits from the due date with costs.

4. The Respondents in their counter have resisted the claim of the applicants only on the ground that they were not confirmed against the permanent post before their services were transferred to ECCL. It is denied that there were permanent vacancies available on the date of transfer. Therefore, in absence of the confirmation of the applicants their case would be dealt with according to the instructions contained in the department of Coal's letter dated 9.1.85. The case of Shri Ram Bhajan Singh was considered against the substantive vacancies existing on 30.9.86, and the case of the applicants could not be considered as there was no substantive vacancies. The case of Shri M.S. Prasad was considered by the Hon'ble Supreme Court after getting classification of the Assistant Government Advocate, Supreme Court, and on non-receipt of the contributory provident fund. Hence, the prayer is made to dismiss the O.A.

5. Heard Shri R.K. Jha, the learned counsel for the applicants and Shri D.K. Jha, Additional Standing Counsel, for the respondents and perused the record.

6. It appears that the earlier OA No.592 of 1993 filed by the applicants was disposed of by a Single Member Bench (the then Hon'ble Member (A), Shri N. Sahu) in term of the order of the same date i.e. 29.1.96, in OA-585 of 1992 in respect of Shri Ram Bhajan Singh. The order in the aforesaid O.A.s. were as follows:-

"I direct the Respondent No.2 to consider

the issue of a confirmation order in the basic grade of the applicant within a period of two months from the date of receipt of this order.

Second, if a confirmation Order is issued, Respondent No.2 shall apply the guidelines mentioned in the judgment of the Supreme Court and, if satisfied, shall declare that the applicant was holding a substantive post.

Third, if Respondent No.2 is not satisfied either to give a Confirmation Order or declare that the applicant is not holding a substantive post he shall state so in a reasoned order.

If he agrees to allow confirmation and declare the applicant as the holder of a substantive post, then pro-rata pension for services rendered shall be allowed in favour of the applicant.

The above exercise shall be completed within a period of three months from the date of receipt of this order."

7. The Respondents Department on consideration of the aforesaid order of the Hon'ble Single Member Bench of this Tribunal informed the applicants that no permanent posts were lying vacant as on 28.2.1981, 29.2.1983 and 31.8.1985, at Central Hospital, Dhanbad, vide Annexure-A-5A, and, therefore, negatived the prayer of the applicant for grant of pro-rata pensionary benefits. However, it appears from the Written Statement filed on behalf of the Respondents that the case of Ram Bhajan Singh under similar circumstances was considered as there existed substantial vacancy on 1.3.83 i.e. to say, before he became employee of BCCL.

Thus, the sole ground for rejection of the claim of pro-rata pensionary benefits in respect of the

applicants is that they were not confirmed against the permanent posts on the date their services were transferred to the BCCL.

8. It is admitted position that the applicants had completed more than 10 years of services under the Central Government prior to the transfer of their services to the BCCL. It is also admitted position that they had been declared quasi-permanent ~~as far~~ back as in the year 1974 and 1976, vide Annexure-A & A-1. As said earlier ~~the applicant No.1 was~~ appointed in 1966, the applicant No.2 was appointed in 1965, and the applicant No.3 was appointed in 1971. There is nothing on the record to show as to what was the nature of their appointments. The distinction between temporary and permanent for the purpose of qualifying service for grant of pension seems to be of no significance in view of the provision under the Rule 13 of the CCS (Pensions) Rules, 1972. It reads as follows:-

**"13. Commencement of qualifying service**

Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity:

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post:

Provided further that -

- (a) in the case of a Government servant in a Group 'D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th

April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and

(b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity."

The aforesaid Rule was subject matter of interpretation by the Hon'ble Supreme Court in Praduman Kumar Jain Versus the Union of India 1994 (4) SLR, and also, in the case of Baleshwar Das & Others Versus the State of U.P. & Others, 1991 SCR page 449. The Hon'ble Supreme Court in Baleshwar Das & Others (Supra) interpreted the term "holding of a post in a substantive capacity" in the following terms:-

" A person is said to hold a post in a substantive capacity when he holds it for an indefinite period, specially for a long duration in contradiction to a person who holds it for a definite or temporary period. It is on probation subject to confirmation. If the appointment is to a post in the capacity in which the appointment is made is of indefinite duration, if the Public Service Commission has selected and has approved, if the test preferred has passed, to have taken and if probation has been prescribed and approved, one may well say that the post was held by the incumbent in a substantive capacity."

9. If we put on the anvil of the aforesaid criteria laid down by the Hon'ble Supreme Court, the facts and circumstances of the case, we have no hesitation in holding

that the applicants were holding the post in the substantive capacity and the reason as assigned by the Respondents Department for not issuing confirmation in respect of the applicants due to non-availability of permanent post, does not appear tenable. Moreover, by O.M. No.18011/1/86-Estt. D dated 28.3.1988, of the Government, Department of Personnel and Training, it is stated that there is no distinction between permanent and temporary employees in the application of pension Rules, and confirmation will be made only once in the service of an official which would be in the entry grade. The confirmation is delinked from the availability of permanent vacancy in the grade.

10. The Respondents Department seems to have refused to accord the confirmation to the applicant without considering the letter and spirit of the order passed in OA-585/92, in respect of Ram Bhajan Singh which was also made applicable in the case of these applicants.

11. To crown, a Single Member Bench of this Tribunal had rendered a decision on 31.8.94, passed in OA-320/93, (Mathili Sharan Prasad Versus the Union of India & Others) exactly on the same point. The applicant, Shri Prasad, joined as Co-operative Supervisor on 16.2.66, in the CMLWO and served there till 30.9.86, i.e. for a period of about 20 years. The said organisation was abolished and merged with the Coal India Limited with effect from 1.10.86, and the employees of the CMLWO were transferred to the different subsidiaries of the Coal India Limited. The applicant's case for confirmation was taken up before the abolition of CMLWO, but it could not be completed. The applicant claimed that in the circumstances, he should be treated as a confirmed employee of the Central Government and

should be held entitled to retirement benefits for the services rendered under the Government. The claim of the applicant was allowed as the applicant had continued in service, after completing the period of probation of two years, for long, and there were laches on the part of the Government in finalising his confirmation. The Union of India, being aggrieved by the aforesaid order in M.S. Prasad's case preferred SLP ( Civil ) No. 10822 of 1995, which was disposed of in the following term:-

"In view of the counter affidavit filed by respondent that he has not received any amount of Contributory Provident Fund from the Government or he has not claimed any amount thereunder and he is entitled to the pensionary benefits. In that view of the matter the special leave petition is disposed of."

Thus, the matter under controversy stands settled. The Divisional Bench of this Tribunal, following the aforesaid case of M.S. Prasad, has allowed the prayer for grant of pro-rata pensionary benefits to some of the similarly situated employees in OA-44/95 - (Basdeo Sharma Versus the Union of India and Others), OA-81/98 ( G.P. Sah Versus the Union of India & Others ), OA-404/97 (Subedar Singh Versus Union of India & Others ), OA-270/95, OA-585/92, OA-438/97 OA-416/97 and OA-563/97.

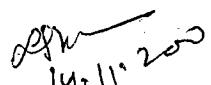
12. Before we part with, we would like to point out that an office order No.15 of 1999 dated 27.7.99, issued by the Officer on Special Duty, Government of India, Ministry of Coal, Jagjivan Nagar, Dhanbad, was filed at the fag end of hearing, to show that the Ministry of Coal, New Delhi, vide letter No. 600027/1/95 dated 3.6.99, has been pleased to confirm the applicants from 28.2.83, i.e. to say, before their services were transferred to the BCCL. It appears from

this letter that the pension of the applicants has been directed to be settled in term of the Ministry's letter No. 21019/2/83 dated 3.1.86, and No.21019/2/93 dated 21.6.85, on completion of 30 years of service or 55 years of age whichever is earlier and not from the date of absorption/transfer to a Public Sector Company. The learned counsel for the applicant seriously challenged the aforesaid letter No.21019/83 dated 3.1.86 and No.21019/2/93 dated 21.6.85 relied upon by the learned counsel for the respondents Railways in support of his contention that the applicants are entitled to pro-rata pension from the date of completion of 30 years of service or attaining 55 years of age whichever is earlier. The learned counsel for the applicant submitted that the aforesaid letters have got no statutory force under Article 309 of the Constitution of India. He referred to the formats 1 & 2 of Appendix 12 of the CCS Pension Rules which prescribes the date of cessations of service under the Central Government as the date for pro-rata retirement benefit. The aforesaid appendix under the CCS Pension Rules have statutory force under Article 309 of the Constitution of India. The learned counsel for the applicant relied upon the decisions of this Tribunal dated 7th July, 2000 in OA-438 of 1997, OA-416 of 1997 and OA-563 of 1997 to buttress his aforesaid contention. We gave our anxious consideration to this aspect of the matter as to the effective date for implementing pro-rata pensionary benefits. We find that the applicants are entitled to get full pension on the completion of 30 years of services or 55 years of age whichever is earlier on absorption in the Public Undertaking. They are paid only on pro-rata basis for the period they were in Government

11.

services and at the rate as applicable on the date of such absorption. There appears no provision for compensating them for the loss ~~likely to be occasioned~~ by price rise for the waiting period till 30 years of service or 55 years of age whichever is earlier. Therefore, we find it difficult to hold that the applicants are entitled to the pro-rata pensionary benefits only after completion of 30 years of service or attaining 55 years of age whichever is earlier. Rather they are entitled to the benefits of pro-rata pension with effect from the date of transfer of their services to the Central Public Undertaking. It may be pointed out that similar view was taken in the order dated 7th July, 2000 passed in OA-438 of 1997, OA-416/97 and OA-563 of 1997.

13. In view of the aforesaid discussions, the application is allowed. The Respondents are directed to pass appropriate order for making payment of pro-rata pensionary benefits as admissible to the applicants with effect from the date of transfer of their services to the Central Undertaking with interest at the rate of 12% per annum within a period of four months from the date of receipt of a copy of this order. The parties shall bear their own costs.

SKS  
  
( Lakshman Jha )  
Member (J)

  
14.11.2000  
( L.R.K. Prasad )  
Member (A)