

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 200 of 2006

Date of order : 3.8. 2007

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Hon'ble Mr. S.N.P.N.Sinha, Member [Admn.]

Akshay Kumar Singh

Applicant.

Vrs.

The Union of India & Ors.

Respondents.

Counsel for the applicant : Shri M.P.Dixit

Counsel for the respondents : Shri G.K.Agarwal, ASC

ORDER

S.N.P.N.Sinha, Member [A] :-

The present application has been filed for setting aside the order of the respondents dated 20.9.2004 and for direction for grant of pro-rata pensionary benefits with effect from 1.10.1986 counting the half service rendered by him on contingent basis for purpose of granting pensionary benefits. It was submitted on behalf of the applicant that he was appointed as Chowkidar in Coal Mines Labour Welfare Organization [in short CMLWO] on 1.4.1968 on muster roll monthly paid contingent basis and he worked till 9.6.1981 without any break as is evident from the certificate

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granted by the authority concerned. He was while working as such selected against permanent post of Chowkidar and he reported for his duty on 10.6.1981. The CMLWO was subsequently merged with Coal India Ltd. with effect from 1.10.1986. The applicant worked in CMLWO till 30.9.1986 and then from 1.10.1986 in E.C.L. [a subsidiary of Coal India Ltd.]. Thus he completed more than 10 years of service counting half service of the muster roll period. O.A. No. 39 of 2004 was filed in which the applicant was applicant no.4. It was disposed of on 19.2.2004 with a direction to the respondents to pass speaking and reasoned order in the case. But by order dated 20.9.2004 his claim claim was rejected. Similar cases [O.A. 508 of 2001 & No. 636 of 2001] were also filed which were disposed of by this Tribunal by order dated 18.3.2003 with similar direction for disposal by the respondents and passing speaking and reasoned orders. The claims in those cases, too, were rejected by the respondents. Later, two similar applications were filed in O.A. No. 47 of 2005 and 69 of 2005 which were allowed by this Tribunal. In those cases the working certificates were granted by the junior Engineer, whereas in the applicant's case it was granted by the Executive Engineer.

2. It was submitted on behalf of the respondents that in compliance with the direction of this Tribunal in O.A. No. 39 of 2004, a detailed order

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was passed. It was stated therein that the applicant was appointed as Chowkidar on 10.6.1981 and he opted for service conditions of Coal India Limited from 1.10.1986. Thus, he rendered a service of 5 years 3 months 22 days while remaining on regular strength of Ex- CMLWO. Records did not indicate his service on muster roll as continuous. Hence he was not eligible for pro rata pensionary benefits. The records of the Muster Roll period are not available as they are not preserved beyond three years. No such entry was found to have been made in his service book either. The alleged certificate given by the Executive Engineer, CMLWO is said to be baseless.

3. Orders of this Tribunal in O.A. No. 69 of 2005 [S.C. Ghosal vs. Union of India & Ors.] and no. 47 of 2005 [Shaym Nandan Pandey vs. Union of India & Ors.] were cited on the applicants' behalf. In first case the relevant portion of the order is reproduced below :-

“The facts as alleged in OA are that the applicant was initially appointed on 10.3.21972 on muster roll as contingent paid employee on monthly rate and while working as contingent paid employee in coal Mines Labour Welfare Organization [in short CMLWO], he was selected on regular basis for the post of Chowkidar vide order dated 31.10.1975 [Annexure-A/2] and joined in the said post on 4.11.1975. Later, CMLWO merged in Coal India Ltd. With effect from

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1.8.1985. The applicant superannuated on the same date. On his retirement the period from 10.3.1972 to 3.11.1975 was not taken into account for calculating the qualifying service. Therefore, O.A. No. 636 of 2001 was filed by the applicant which was decided on 18.8.2003 with the direction to the respondents to verify his total service. In pursuance of the direction, the impugned order dated 18.9.2004, as contained in Annexure-A/5, has been passed. The same is under challenge.

The respondents have calculated the service period from 4.11.1975 to 1.8.1975 which works out to 9 years 8 months and 27 days. The period of service from 10.3.1972 to 4.11.1975 has not been taken into account for determining the qualifying service. Therefore, this is the only point for adjudication.

The applicant has filed the certificate as contained in Annexure- A/1 as a proof of his employment from 10.3.1972 to 4.11.1975. The same has not been relied upon by the respondents as flimsy grounds. It is alleged that the certificate was granted by the incompetent authority. If so, action can be taken against the concerned officer. The applicant cannot be penalized for same. The fact that the said certificate does not bear reference no. and date or its copy has not been filed with records in the office also amounts to lapse on the part of the officer. The action if any can be taken against him. The same cannot form a ground to reject the certificate. It was open to the respondents to make an enquiry but they did not choose to do so. The applicant, in any case, is not at fault. The respondents also do not allege that it is a forged certificate. Therefore, it was

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incumbent on the part of the respondents to verify its correctness. They want to escape their responsibility by saying that records are not available.

It is also relevant to mention that the applicant was not recruited as Mali from open market. If so, it was necessary for the respondents to verify in what capacity the applicant was working in the organization before his selection on the post of Mali. The respondents did not fulfill any of its obligation in the process of verification. The applicant finds further support from the certificate of Medical Superintendent, Central Hospital, Kall, Asansol certifying his service from 4.11.1974 to 3.11.1975.

In the circumstances, I am of the opinion that reliance be placed on the certificate as contained in Annexure-A/1. Based on this the applicant has completed more than 10 years of service [taking into account 50% of contingent service]. Thus, he is entitled for pension under the Pension Rules accordingly."

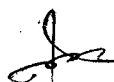
Similar decision was taken by this Tribunal in O.A. No. 47 of 2005.

4. The respondents filed W.P.S. No. 3398 of 2006 before the Hon'ble Jharkhand High Court against the order of this Tribunal in O.A. No. 69 of 2005 which was dismissed by order dated 3.9.2006.

5. The facts in the present case are similar to the ones in O.A. No. 69 of 2005. There is, therefore, no reason to come to a conclusion here different from the one this Tribunal reached in the said O.A. The same has also been upheld by the Hon'ble High Court, Jharkhand. In the

circumstances, reliance can be placed on the certificate as contained in Annexure-A/1; The applicant, therefore, have completed more than ten years of service [taking into account 50% of contingent service]. The impugned orders dated 20.9.2004 as contained in Annexure-5 is set aside to the extent that it is declared that 50% of the applicant's service as contingent paid employee shall be taken into account for the purpose of calculation of qualifying service. The claim for interest in the circumstances is rejected. The respondents are directed to forthwith settle the pensionary dues of the applicant accordingly.

6. The O.A. is allowed as above. No order as to costs.


[S.N.P.N. Sinha]
Member [Admn.]

mps.