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OA 427/2006

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA No. 427 of 2006

Date of order : 3.8.2007

C O R A M

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

Chandan Balmiki & Ors.

Applicants.

Vrs.

The Union of India & Ors.

Respondents.

Counsel for the applicant : Shri M.P.Dixit

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

O R D E R

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

The present application has been filed for quashing the order of the respondents no.6 dated 31.5.2005 with regard to applicability of pensionary benefits from the date of completion of 30 years of service or 55 years of age whichever is earlier and for direction to release pro-rata pensionary benefits from the date of transfer/absorption in the subsidiary of Coal India Ltd. The two applicants are the sons of late Manna Balmiki

^{who was}
~~who was~~ initially appointed in Coal Mines Labour Welfare Organization [CMLWO] on contingent paid monthly rate basis with effect from 5.3.1967 as Safaiwala. ^{He} ~~He~~ worked continuously up to 16.12.1972. While working so, ^{He} ~~he~~ was appointed/selected on regular basis with effect from 17.12.1977. ^{He} ~~He~~ worked in CMLWO up to 31.7.1985 and ^{was} ~~was~~ subsequently absorbed in a subsidiary of Coal India Ltd. ^{He} ~~He~~ is entitled to get pro-rata pension with effect from 1.8.1985 including the benefits of Central Govt. Family Pension. An earlier O.A. No. 221 of 2003 was filed by eight applicants before this Tribunal which was disposed of with direction to the respondents to verify the records and if it is found that the applicant had competed more than 9 years 9 months of service, ^{they} ~~she~~ should be extended the benefits prayed for. Such a verification was made and it was found that all employees of Ex- CMLWO who had rendered 9 years 9 months ^{of} service or more before their transfer to Public Sector Understanding would be deemed to have been confirmed in Govt. service on the date of their transfer from CMLWO. In the meanwhile, a decision was taken by the Respondents on 31.5.2005 for payment of pro-rata pensionary benefits from the date of 30 years of service or 55 years of age instead of from the date of transfer to the subsidiary of Coal India Ltd. It is further claimed that similar issues have been settled by this Tribunal in O.A. No. 320 of 1993

and No. 464 of 1996 and the orders have been upheld up to the Apex Court along with O.A. No. 438 of 1998 No. 416 of 1997 and No. 563 of 1997 which have been upheld by the Hon'ble High Court, Patna and in which payments have since been made.

2. It has been submitted on behalf of the respondents that as the particulars of the applicants' father as per records indicate his date of birth as 1.7.1956, his date of engagement as casual worker as 5.3.1967, worked as such till 16.12.1972, and his date of appointment as 17.12.1977. Thus, he got appointment as a casual hand at the age of 10 years 8 months 4 days, which appears to be wrong. According to Rule 13 of CCS [Pension] Rules 1972, the qualifying service of a government servant will commence from the date he takes charge of the post to which he is first appointed either substantively or in officiating or temporary capacity provided such officiating or temporary service is followed by substantive appointment in the same or another service or post, provided further than service rendered before attaining the age of sixteen years shall not count for any purpose; in other cases, service rendered before attaining the age of eighteen years shall not count except for compensation gratuity. Besides, in this case there is break of 5 years from 1972 to 1977. It was further submitted that under Rule 14, half the service paid from contingencies will

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be allowed to count towards pension at the time of absorption in regular employment if such service was in a job involving whole time employment in a type of work for which regular posts could have been sanctioned and payment has been made ~~either~~ on monthly basis and it should have been continuous service.


3. It is worthwhile to reproduce below the relevant portions of the orders of this Tribunal in O.A. No. 438 of 1997, no.416 of 1997, no. 563 of 1997 which were heard together and disposed of by a common order :-

"2. The applicants in all the O.As. Have prayed for grant of pro-rata pensionary benefits/dues/ arrear with effect from 1.10.1986 as similarly situated employees i.e. Shri M.S.Prasad, the applicant in O.A. No. 320 of 1993 and Habaldar Singh, applicant in O.A. 464 of 1996 have been allowed, and for setting aside the order whereby the same benefits have been refused to the applicants with interest at the rate of 25% on the arrear amount.

3. The applicants joined as 3rd and 4th grade employees in between 1967 to 1976 in Coal Mines, Labour Welfare Organization [CMLWO], Ministry of Energy, government of India and served there till 30th September, 1986 i.e. more than 10 years. The Department of CMLWO was abolished and merged with Coal India Limited [CIL]. After abolition of CMLWO the services of the applicants were transferred to CIL and to its subsidiary companies from 1.10.1986. It is stated that the ^{re-}after the applicants ceased ²to be in ²

service under the Govt. Of India.

4. It is the case of the applicants that they were not given benefits of pro-rata pension by the respondents. The aforesaid similarly situated employee, Shri M.S. Prasad, who filed O.A. No. 320 of 1993, before this Tribunal was allowed the same benefits vide order dated 31.8.1994. The respondents Union of India filed SLP against the aforesaid order before the Hon'ble Supreme court vide SLP No. 10822 of 1995. Thereafter, the Respondent No.2, Officer on Special Duty, Govt. of India, Ministry of Coal, Kalyan Bhawan, Jagjivan Nagar, Dhanbad [Bihar] was informed by the under Secretary to the Govt. of India to comply with the order in respect of Shri Prasad who had been held entitled for pensionary benefits with effect from 1.10.1986. The respondent no.2 also wrote to the respondent no.5, Director [Coal], vide his letter dated 10.2.1996 to issue a general order allowing the similarly situated employees, the benefits of pro-rata pension with effect from 1.10.1986 in the light of the order passed in case of Shri M.S. Prasad. But to their surprise, they have been denied the benefits of pro-rata pension. Hence the O.As.

5. The respondents in their counter have denied that the case of the applicants is on similar footing as that of M.S. Prasad. It is stated that the date of commencement of pension in respect of the applicants is on completion of 30 years of service or 55 years of age whichever is earlier in terms of the Govt. of India, Department of Pension and Pension welfare Om. No. 4[8]/85 P&T PW dated 30th January, 1986 and they are not entitled for grant of pro-rata pension with effect from 1.10.1986." 

"7. It appears from the order dated 31.8.1994, passed in O.A. 320 of 1993 that Shri M.S. Prasad claimed pro-rata pensionary benefits from the date of transfer of his services from CMLWO to CIL i.e. from 1.10.1986. He had put in about 20 years of service but was not confirmed. This Tribunal by its aforesaid order held him deemed confirmed. In Govt. service prior to merger in Coal India Limited and, as such, entitled to retirement benefits for the services rendered under the Govt. as per clause [d] of the pensionary term on en mass transfer of employee to PSU/[vide Annexure-A/1 to OA 438 of 1997]. The Union of India being aggrieved by that order filed SLP (Civil) No.10822 of 1995 before the Hon'ble Supreme Court which was disposed of in terms of following order :-

"In view of the counter affidavit filed by the respondents that he has not received any amount of contributory provident fund from the Govt. or he has not claimed any amount thereunder and is entitled to the pensionary benefits. In that view of the matter the Special Leave Petition is disposed of" [vide Annexure-A/2] to O.A. 438 of 1997].

8. In O.A. 464 of 1996 this Tribunal vide its order dated 26.5.1997, relying upon the aforesaid order of the Hon'ble Supreme Court allowed the prayer for grant of pro-rata pensionary benefits with effect from 1.10.1986 to Hawaldar Singh, a similarly situated employee [vide Annexure-A/8] to the O.A. 438 of 1997].

9. The ld. counsel for the applicants has relied upon a number of decisions rendered by this Tribunal and also by Hon'ble Apex Court to drive home the point that the applicants are entitled to pro-rata

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pensionary benefits from the date of en-mass transfer/absorption in CIL and its subsidiary companies. He referred to the order dated 26.4.1996 passed in O.A. 44 of 1995 [Basudeo Sharma versus the Union of India & Ors] and contended that the applicant, Shri Sharma, had rendered more than 10 years of services in the Govt. before his absorption in the Uranium Corporation which entitled him to the benefits of the liberalized pensions Rules introduced in 1972. This Tribunal in the conspectus of facts and the judgment of the Hon'ble Supreme Court directed the respondents to pay the applicant the pensionary benefits on pro-rata basis for the period he was working in the Atomic Regional Division still 16.10.1997, inclusive of the services rendered with Govt. of Bihar. The applicant was also allowed interest at the rate of 15% for having been denied the pro-rata pensionary benefits after the retirement without any valid ground. However, the applicant was precluded from making any claim for GPF accrual in his account which was partially subscribed by the employee.

10. It may be pointed out that the Union of India, Department of Atomic Energy filed a Misc. Petition, vide No.169 of 1998 for clarification of the order passed in the aforesaid O.A. No. 44 of 1995 before this Tribunal, this Tribunal clarified and directed vide order dated 1.1.1999 that the interest was payable to the applicant from the date of pensionary benefits on pro-rata basis became due as directed by the Tribunal in the aforesaid order passed in O.A. 44 of 1995.

11. In OA No. 81 of 1998, this Tribunal in case of G.P. Shah versus

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the Union of India directed the Respondents to consider the case of the applicant afresh for sanction of pro-rata pension in the light of the principles laid down in the aforesaid V.D. Sharm's case and to pass appropriate order within a period of four months from the date of receipt of a copy of the order. In the case of Subedar Singh vs. Union of India [OA 404 of 1997] decided on 23.7.1999 [reported in BCCL part V page 168] this Tribunal relying upon the order passed in O.A. 320 of 1993 and O.A. 464 of 1995 [supra] held that the applicant is entitled to pro-rata pensionary benefits from the date of transfer of their services to the Central Public Sector Undertakings with interest @12% per annum. The Review Petition filed against the aforesaid order passed in O.A. 404 of 1997 has already been rejected.

12. In T.S. Thiruvengadam vs. the Secretary, Govt. of India, Ministry of Finance, Department of Expenditure, New Delhi and others reported in JT 1993 [1] SC 609, decided on 17.2.1993, held the Memorandum providing pro-rata pensionary benefits to the employees absorbed in the Public Undertakings only on or after June, 1967 as arbitrary and hit by Articles 14 & 16 of the Constitution. The employees permitted to be absorbed in the Central Govt. Public Undertakings in public interest were deemed to have retired from Govt. service from the date of his absorption and therefore, eligible to receive the retirement benefits under Rule 37 of CCS Pension Rules, 1972.

13. In Moinuddin Shah and others vs. Union of India & others, 6/97 Swamy News AS 69, Patna this Tribunal vide its order dated

12.7.1994 passed in O.A. 270 of 1995 relying upon the judgment of the Hon'ble Supreme Court in Praduman Kumar Jain vs. Union of India 1994 [4] SLR page 439, and also, in Baleshwar Das and others vs. the State of U.P. & others 1991 SLR 449 and decision rendered in M.S. Prasad [supra] and Ram Bhajan Singh in O.A. 585 of 1992 held that the applicants had made out a case for treating them as permanent employee of Central Govt. for the purpose of grant of pro-rata pensionary benefits for their services under the Central Govt. As per extant instructions. However, the benefit was not allowed to those applicants whose total service under the Central Govt. worked out to less than 10 years.

14. Thus, it is clear from the numerous decisions referred to above that the applicants are entitled to pro-rata pensionary benefits for the services rendered to the Govt. for the period 10 years and above. It is also admitted position of the respondents. In fact, the respondents have allowed to some of the applicants' the benefits of pro-rata pension, but not with effect from the date of transfer/absorption in public undertaking rather from the date they completed 30 years of service or 55 years of age whichever is earlier.

15. The ld. counsel for the respondents contended that the applicants are entitled to pro-rata pension not from the date of their absorption in Public Undertaking, but only on their completion of 30 years of services or attaining 55 years of age whichever is earlier in terms of Govt. of India O.M. Dated 13.1.1986. The ld. counsel for the applicants seriously challenged the aforesaid contention of the

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learned counsel for the respondents. The ld. counsel for the applicants submitted that the aforesaid O.M. ¹has got no statutory force under Article 309 of the Constitution of India. On the contrary, he referred to the Formats 1 & 2 of Appendix 12 of the CCS Pension Rules, which prescribe the date of cessation of service under the Central Govt. as the date for payment of pro-rata retirement benefits. He contended that the aforesaid Appendix under the CCS Pension Rules had statutory force under Article 309 of the Constitution of India. The contention of the learned counsel for the applicants is that the effective date for implementing pro-rata pensionary benefits is the date of absorption in Public Undertakings/Autonomous Body, i.e. to say in the instant case 1.10.1986 is the effective date for grant of pensionary benefits. The contention of the learned counsel for the applicants appears quite sound and logical. The Govt. does not grant full pension on completion of 30 years of services or 55 years of age whichever is earlier on absorption in the Public Understanding. They are paid only on pro-rata basis for the period they were in Govt. services, and at the rate as applicable on the date of such absorption. There appears no provision for compensating them for the loss to be occasioned by price rise for the waiting period of till 30 years of services or 55 years of age whichever is earlier.

16. Therefore, I am of the considered opinion that the Govt. of India, Department of Pen and Pen Welfare O.M. No.48/85, P&PW dated 13th January, 1986, which has got no statutory force, and has so strongly been relied upon by the learned counsel for the respondents, is of no assistance for accepting the contention that the pro-rata

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pensionary benefits would be payable only on completion of 30 years of services or 55 years of age whichever is earlier."

4. The Hon'ble High Court, Patna in CWJC No. 10016 of 2000 dismissed the petition of Union of India with the observation :-

"Learned counsel for the Union of India, the petitioner in this petition, accepts that the order on the petition can be no different than one passed in the similar circumstances in C.W.J.C. No. 7245 of 2000; The Officer on Special Duty, Govt. of India, Ministry of Coal vs. Hawaldar Singh, decided on 11 August, 2000.

2. The terms of order in C.W.J.C. No. 7245 of 2000 shall be applicable in the present case also.

3. The, this writ petition is dismissed."

5. The facts of the present case evidently are similar to the two cases discussed by this Tribunal in O.A. No. 438 of 1997, 416 of 1997 and 563 of 1997, order being upheld by the Hon'ble High Court, Patna the common contentions issue being the provision regarding 30 years of service or 55 years of age for eligibility for pensionary benefits. There is, therefore, no reason to come to a different conclusion in this case. The application is in the result allowed and it is held that the applicants are entitled for grant of pro-rata pensionary benefits with effect from the date of transfer of their service to the Central Public Undertakings with interest at the rate of 12 per cent. The order denying the pro-rata pensionary benefits is hereby quashed.

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This order shall be carried out within a period of four months from the date of receipt of a copy of this order. No costs.



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

mps.