

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

RA 46/2007

[OA No. 427 of 2006]

Date of order :

9th September, 2010

C O R A M

Hon'ble Mr. Sudhir Kumar, Member[Administrative]

1. Union of India through Secretary, Ministry of Coal, Shastri Bhawan, New Delhi.
2. Officer on Special Duty, Ministry of Coal, Govt. of India, Kalyan Bhawan, Jagjiwan Nagar, Dhanbad.
3. Coal Mines Provident Fund Commissioner, Ministry of Coal, Kalyan Bhawan, Jagjiwan Nagar, Dhanbad.
4. Regional Pay & Accounts Officer, Office of the R.P.A.O., Ministry of Coal, Jagjiwan Nagar, Dhanbad.
5. Sr. Accounts Officer, Principal Account Office, Ministry of Coal, Jagjiwan Nagar, Dhanbad.
6. Special Officer [W], O/o Officer on Special Duty, Ministry of Coal, Jagjiwan Nagar, Dhanbad.

Applicants.

By Shri Deepak Roy, Advocate

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1. Chandan Balmiki, son of Late Manna Balmiki and
2. Kundan Balmiki, S/o Late Manna Balmiki,
Both sons of Ex.- Safaiwala, Central Hospital, Kalla under C.M.L.W.OP.,
present address Village/P.O. Chewara, C/o Shri S.N. Pandey, District –
Shekhpura [Bihar].

Respondents.

By Shri M.P.Dixit, Advocate

ORDER

Sudhir Kumar, Member [Administrative] : -

This is a review application filed under Rule 17 of the Central Administrative Tribunal [Procedure] Rules, 1987 against the order dated 3.8.2007 passed in OA 427 of 2006 by a Single Bench of this Tribunal. The applicants of this RA were the respondents of that OA.

2. The OA 427 of 2006 had been filed by the respondents/ applicants' late father namely Shri Manna Balmiki, who had later been substituted by his sons, with the prayer for quashing, and setting aside the order dated 31.5.2005 with regard to applicability of pensionary benefits, and further grant of pro-rata pensionary benefits, and its arrears from the date of his transfer/absorption in the Subsidiary of Coal India Limited along with interest.

3. The review applicants have submitted that in fact the respondents/ applicants of OA had only challenged the letter dated 31.5.2005, which was not an order, but only an internal correspondence between Special Officer [Welfare], Dhanbad, to the Personnel Manager [Welfare/Admn.], Central Hospital, Kalla, in which the name of the respondents/applicants' father besides the names of many others had been mentioned, and a request was made to the Personnel Manager to process their pension cases without delay. It has been submitted by the review applicants that it is apparent from the letter impugned before this Tribunal that

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they had at no stage rejected the case of the applicant of the OA at that point of time, and the settlement of pension was merely under process, and no final order of rejection denying the claim of the applicants had been passed by them till that date. The review applicants have further submitted that after a series of decisions, it is no more res integra that the pro rata pensionary benefits is payable only from the date of transfer/absorption in the subsidiary of Coal India Limited, and not from the date of completion of 30 years of service or ~~5~~55 years of age. su.

4. The Review Applicants/Respondents of the OA had filed a written statement in the OA categorically taking the plea that in any case, when the initial date of appointment of the applicant as Casual Labour was shown as 5.3.1967, with the date of birth as 1.7.1956, it thwarts the case of the applicants of the OA that it is not permissible that the applicant at the age of 10 years 8 months and 4 days got the appointment as Casual Labourer in Group 'D', and, therefore, this disentitles him the benefits in view of Rule 13 of the Central Civil Services [Pension] Rules, 1972. The Review Applicants have further prayed that they had taken a clear stand that as per Govt. of India's decision dated 14th May, 1968 issued under Rule 14 of the Pension Rules, there are some mandatory requirements to count fifty per cent of the services rendered as contingency paid staff towards qualifying service for the purposes of pension, and on a close scrutiny, the case of the Respondents/Applicants of the OA would be thwarted.

5. The OA was heard and allowed by this Tribunal on 03.08.2007, with the su.

findings that the case of the applicant is also covered and similar to the cases decided by this Tribunal in OA 438 of 1997, O.A. 416 of 1997 and O.A. 563 of 1997, since up-held by the Hon'ble Patna High Court, and , therefore, the OA of the Respondents/Applicants of the OA was allowed for grant of pro-rata pensionary benefits to late Shri Manna Balmiki, with 12 per cent interest. It has been directed in that order as follows :-

“5. 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. 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.”

6. The Review Applicants submitted that there was an error apparent on the face of the record, as the Hon'ble Member had erred in arriving at his findings directing the quashing of “the impugned order”, in as much as there was never any order passed by the Department denying the pro-rata pensionary benefits, though in the facts and circumstances mentioned in the written statement, the applicants of the OA were not otherwise entitled for grant of pro-rata pensionary benefits in respect of service of their deceased father. The Review Applicants have submitted that the Hon'ble Member committed an error in not appreciating that the material available on record was only a correspondence between the authorities, with no final decision having been taken in the matter, and what was being quashed was Re.

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actually a request made to the concerned to process the pension claim. The Review Applicants have submitted that while passing the order the Hon'ble Member remained focussed only towards one aspect of the matter and proceeded under the impression as if the department has rejected the claim of the applicants, while applying the principle of grant of ^{pro-rata} pensionary benefits to others, when he there was nothing available on the record showing the rejection the case of the applicants of the OA. They have further submitted that the Hon'ble Member has erred in not recording any findings with regard to the date of initial appointment of he ^{father of the} the applicant as casual labourer, and the age which supposedly was much less than eleven years, at which age an appointment as a Casual Labourer could not have been made, which alone dis-entitles the deceased from a consideration for grant of pro rata pensionary benefits. Therefore, the Review Applicants have prayed that the matter requires re-consideration, and at least a finding on this aspect of age. The Review Applicants have further submitted that the Hon'ble Member has nowhere taken note of the averments made in the written statement filed by the Department, and thereby it appears that the stand of the Department had not been taken into consideration while giving an adverse finding. They had, therefore, he prayed for the order passed on 3.8.2007 to be reviewed, and for the OA to be dismissed, or alternatively, they prayed that pending final disposal of this review application, the compliance of the order be suspended or any order or orders as this Tribunal may deem fit and proper in the interest of justice. he

7. It is clear from the pleadings in this Review Application that neither the Review Applicants/Respondents of the OA, nor the Respondents/Applicants of the OA are denying the existence of the provision of payment of pro rata retirement benefits, and for 50 per cent of the service period prior to absorption in the Govt. service to be taken into account before calculating the period of eligibility for pensionary benefits. The learned counsel for the applicants of OA and respondents in the review application argued against this review application being allowed stating mainly that no error apparent on the face of the records had occurred. lu.

8. The original case file was called for and perused. It is seen that in para 4 of the written statement, the respondents had pointed out that the date of birth of the late father of the applicants had been shown as 01.07.1956, and the date of his engagement as casual worker was shown as 05.03.1967, and had specifically pointed out that the claim, that the deceased had got appointment as casual labourer in Group 'D' at the age of 10 years 8 months and 4 days appears to be wrong, and against Rule 13 of the CCS [Pension] Rules, 1972, wherein in proviso [a] it has been specifically provided that any service rendered before the age of 16 years shall not count for any purpose, and in proviso [b] it has been provided that in the case of a Government servant not covered by Clause [a], any service lu. rendered before attaining the age of eighteen years shall not count, except for compensation gratuity. This position of law has not been taken into account by the Hon'ble Member. In para 2 of the impugned order, the discrepancy regarding the lu.

date of birth and the averment that the applicants' father could not have joined service at the age of 10 years 8 months and 4 days had also been made in the same para, however, it has not been taken into consideration by the Hon'ble Member while passing the order. In the operative portion in para 5, no finding on this aspect, either on the question of law, or on the question of facts, has been recorded by the Hon'ble Member [Administrative].

9. In these circumstances, there is an error apparent on the face of the record in the order as passed by the Hon'ble Member [Administrative] on 03.08.2007. Therefore, the review application is allowed in part, and it is ordered that para 5 operative portion of the judgment will read as follows :-

“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.~~ 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.”

10. The Review Application is in the result allowed, and it is held that the Respondents/Applicants of this OA are entitled for grant of pro rata pensionary

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benefits with effect from the date of transfer of services of their deceased father to the Public Sector Undertaking, subject to the qualification under Rule 13 of the CCS [Pension] Rules 1972, that any service rendered before attaining the age of 18 years, as provided for in proviso [b] to that rule, would not be counted in the case of the deceased. After determining the amount to be paid, interest @ 12 per cent will be payable on delayed payment. Since no order on grant of such pro rata pensionary benefits has so far been passed, the Review Applicants/Respondents are directed to consider the case of the deceased father of the Respondents/Applicants of the OA, and pass an order accordingly within a period of four months from the date of receipt of this order. No order as to costs.



[Sudhir Kumar] 09/09/2010 -
Member [Administrative]

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