

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 1424/2015

New Delhi, this the 13th day of January, 2017

Hon'ble Mr. P.K. Basu, Member (A)

Bheem Paswan,
Aged 61 years,
Group-D, Beldar,
S/o Late Shri Fagni Paswan,
R/o J-530, Mangol Puri,
Delhi-83. .. Applicant

(By Advocate : Shri U. Srivastava)

Versus

Union of India through

1. The Secretary,
Ministry of Urban Development,
Parliament House,
Parliament Street,
New Delhi.
2. The Delhi Development Authority,
Through its Vice Chairman/Commissioner (P),
B-Block, Vikas Sadan, INA,
New Delhi. .. Respondents

(By Advocate : Ms. Sriparna Chatterjee)

ORDER (ORAL)

The applicant served as a Beldar with the respondents' Organisation – Delhi Development Authority (DDA). The controversy is that his date of birth (DOB) according to the respondents is

15.05.1946. It is alleged that there is some tampering in the service book and other relevant documents and the DOB was changed to 15.05.1953.

2. The respondents' case is that when they realised that the applicant has continued even beyond his due date of superannuation, he was issued a Show Cause Notice and, thereafter, vide order dated 17.05.2013, he was retired w.e.f. 31.05.2006.

3. Thereafter, the respondents issued order dated 20.03.2015 wherein it has been ordered that an amount of Rs.7,08,283/- be recovered from the applicant for his over stayal of service of 6 years, 6 months and 11 days beyond the date of superannuation. This amount of Rs.7,08,283/- is stated to be the difference between the excess payment made to the applicant of Rs.14,85,041/- minus the dues on account of gratuity, commutation and arrears of pension (w.e.f. May, 2006) comes out to Rs.7,76,758/-. It is not made clear how the amount of Rs.14,85,041/- has been worked out. Apparently, this is the salary and other dues paid to the applicant for the excess period of 6 years, 6 months and 11 days.

4. The order dated 20.03.2015, on the question of tampering and who is responsible for the same, states as follows:

“Further, since after due investigation, it has not been possible to pin-point responsibility for the tampering of the service book of the official on anyone in particular, it has been decided not to initiate or pursue departmental/vigilance proceedings against anyone including him.”

It is the case of the respondents' counsel that though they have not been able to establish that it is the applicant himself on his own or in connivance with some office staff has tampered with the official record, he should have been aware that his DOB is 15.05.1946 and he should have on his own sought superannuation from 2006.

5. The applicant has filed this O.A. aggrieved by the order dated 20.03.2015 and prayed as follows:

- “(b) Quash and setting aside the impugned order dt. 20.03.15 issued by the respondent No.2 to the extent, proposing recovery of Rs.14,85,041/- with a direction to the respondents to calculate the entire amount of retirement dues namely gratuity, pension etc. as per entitlement of the applicant on the date of his retirement, in accordance with the relevant rules and instructions on the subject after declaring the same is as deliberate, biased, perverse, illegal, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the Constitution of India and against the mandatory provisions of law as admittedly it has been decided not to initiate or pursue departmental/vigilance proceedings against anyone including the applicant too being not possible to pin-point responsibility for the tampering of the service book of the applicant on anyone in particular.
- (c) Directing the respondents to release the entire retirement benefits of the applicant admissible to him in accordance with the relevant rules and instructions on the subject with all other consequential benefits namely the arrears with interest etc.’
- (d) Allowing the O.A. of the applicant with all other consequential benefits and cost.”

6. We have heard the learned counsel for both sides and perused the pleadings.

7. It is admitted that the respondents have not been able to pin-point that it is the applicant himself on his own or through anybody else, who has tampered with the DOB recorded in the service book etc. Therefore, there is nothing against the applicant except that the learned counsel for the respondents stated that he should have known that his DOB is 15.05.1946 and not 15.05.1953.

8. Clearly, the applicant has served the respondents – DDA for this period of 6 years, 6 months and 11 days, for which he has to be paid his dues of pay and allowances etc. Therefore, whatever has been paid to the applicant for this period of 6 years, 6 months and 11 days as his salary etc. cannot be recovered. Of course, this period of 6 years, 6 months and 11 days would not count as approved service for calculating pensionary benefits. Since he joined in 1970, respondents may treat his service from 1970 till 31.05.2006 for pensionary benefits. The applicant has also appeared before me. In case, if he is 1946 born, he should be 71 years old. This does not seem probable from his appearance. However, this is not an issue before this Tribunal and, therefore, I give no finding on this aspect.

9. The O.A. is, therefore, allowed with specific direction to the respondents to release gratuity, commutation and arrears of pension to the applicant considering his period of service from his date of joining in 1970 till 31.05.2006 as per rules and without making any adjustment of pay, allowances etc. received by the applicant for the period of 6 years, 6 months and 11 days, i.e. for purported excess period from 31.05.2006 till 30.05.2013. The respondents shall complete this exercise within a period of 90 days from the date of receipt of a certified copy of this order. No order as to costs.

(P.K. Basu)
Member (A)

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