

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIREGN.NO.: OA/051/00242/2018Date of Order:- 09.08.2018**C O R A M**

HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

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Faiyaz Ahmad, son of Late Wahid Alam, resident of Idgah Mohalla,
PO-Pathardih, PS-Sudamdih, District-Dhanbad-826 001.

.....**Applicant.****By Advocate** :- Mr. Binay Kumar Sinha.

Vs.

1. M/s Indian Iron and Steel Plant, Chasnala, Dhanbad, through its Managing Director, Baranpur, PO & PS-Baranpur, District-Burdwan, West Bengal.
2. Chief Personnel Manager, Indian Iron and Steel Plant, Chasnala, PO & PS- Chasnala, District-Dhanbad-828 119.
3. Deputy Chief Personnel Officer, Indian Iron and Steel Plant, Chasnala, PO & PS-Chasnala, District-Dhanbad-828 119.
4. Assistant general Manager, E.M.E. Department, Indian Iron and Steel Plant, Chasnala, PO & PS-Chasnala, District-Dhanbad-828 119.
5. Deputy General Manager/Agent, Indian Iron and Steel Plant, Chasnala, PO & PS-Chasnala, District-Dhanbad-828 119.
6. General Manager, Indian Iron and Steel Plant, Chasnala, PO & PS-Chasnala, District-Dhanbad-828 119.

.....**Respondents.****By Advocate**:- Shri V.K.Dubey.**O R D E R (ORAL)**

K.N.Shrivastava, Member (Admn.) :- The applicant was working as Assistant-cum-Register Keeper at Chasnala Colliery, IISCO Steel Plant under Steel Authority of India Limited. As per the official records of

the respondents, his date of birth is 28.02.1946. The applicant, however, claims that his date of birth is 18.07.1951 and in support of it, he is purported to have produced a copy of his School Certificate. On the other hand, the respondents considering his date of birth as 28.02.1946, in the meanwhile, retired him from service on 28.02.2006 in view of the fact that he has attained the age of superannuation on the day i.e. he had reached the age of 60 years. Since the respondents did not accept his contention, the applicant approached the Hon'ble Jharkhand High Court in WP(S) No. 303 of 2005 which was disposed of by order dated 21.05.2009 with the following observation/direction:-

“8. For the reasons discussed above, I find merit in this application. Accordingly, this writ application is allowed. The impugned order dated 31.10.2000 (Annexure-9) passed by the respondents, is hereby set aside. The matter is remitted back to the respondents who shall reconsider the petitioner's claim in the light of the grounds stated by him including the certificates in proof of his age and in the light of the judgments passed by this Court as also by the Supreme Court on similar issues, referred to by the petitioner. Such decisions shall be taken within three months from the date of receipt/production of a copy of this order.”

2. In compliance of the aforementioned direction of the Hon'ble High Court, the respondents vide Annexure-A/2 letter dated 11.02.2011 informed the applicant as under:-

“Your case has been considered in the light of the decision dated 21.05.2009 passed in WP(S) No. 303 of 2005.

The Hon'ble Court has taken into consideration the Matriculation Certificate and also directed to take into consideration the documents.

In compliance of the order of the Hon'ble High Court and taking into consideration your matriculation certificate, your date of birth is hereby assessed as 18.07.1951, as such you will superannuate in July, 2011.

In view of this order you are directed to give your joining within 07 (Seven) days from receipt of this letter."

3. Pursuant to Annexure-A/2 letter the respondents reinstated the applicant in service w.e.f. 12.02.2011. He has been paid salary from 12.02.2011 to 31.07.2011. The applicant's claim is that the respondents had kept him out of service illegally from 01.03.2006 to 11.02.2011 and, hence he is entitled for getting arrears of salary for this period.

4. Arguments of Shri B.K.Sinha, learned counsel for the applicant and Shri V.K.Dubey, learned counsel for the respondents, are heard. Shri Dubey prayed for some time for filing reply/written statement to OA. We, however, felt that given the nature of controversy involved and in view of the letter of the respondents at Annexure-A/2 dated 11.02.2011, reply/written statement is not required as the facts are not in dispute. The learned counsel for the applicant, more or less, addressed on the averments made in the OA. Shri Dubey, on the other hand, besides drawing our attention to the averments made in the reply/written statement, submitted that the applicant has not worked from 01.03.2006 to 11.02.2011 and as such, the said period

has been declared as dies-non and he is not entitled for payment of salary for the said period. In this regard, Shri Dubey placed reliance on the following judgments:-

- (i) A.P.S.R.T.C. & Anr. vs. B.S.David Paul (2006 0 AIR(SC) 961;
- (ii) Rajasthan State Road Transport Corporation vs. Shyam Bihari Lal Gupta (2005 0 AIR(SC) 3476;
- (iii) Airport Authority of India & Ors. vs. Shambhu Nath Das @ S.N.Das (2008 0 AIR (SC) 2896); and
- (iv) Union of India & Ors. vs. Vijay Pal Singh (2010 12 SCC 737).

5. We have considered the submissions made by the learned counsel for the parties and have also gone through the pleadings. It is not in dispute that the applicant was prematurely retired by the respondents on 28.02.2006 considering his date of birth as 28.02.1946. The issue relating to the date of birth of the applicant has since been settled. The respondents have also accepted that his date of birth is 18.07.1951 and, accordingly, vide Annexure-A/2 order dated 11.02.2011 reinstated him in service w.e.f. 12.02.2011. The applicant has thereafter worked till he superannuated from service on 31.07.2011.

6. We are not in agreement with the contention of Shri Dubey, learned counsel for the respondents, that the period from 01.03.2006 to 11.02.2011 is to be treated as dies-non and following

the principles of 'No work no pay' the applicant is not entitled for payment of salary for this period. The fact is that the applicant all through has been claiming his date of birth as 18.07.1951 which was not being accepted by the respondents and consequently, he was prematurely retired from service by the respondents on 28.02.2006.

7. Now, it is an admitted fact that the applicant remained out of service from 01.03.2006 to 11.02.2011 not on his volition but on account of the respondents retiring him prematurely and hence, the reason for applicant not working in that period is entirely attributable to the respondents. We have also perused the judgments relied by Shri Dubey. We find that these judgments have no applicability to the present case on accounts of facts being different. In those cases, the petitioners were removed from service for unauthorized absence and subsequently reinstated in service for certain technical reasons and that is how the Hon'ble Supreme Court took a view that the period from the date of their termination to the date of reinstatement should be treated as dies-non. The fact of the instant case is entirely different as noticed herein above. We, therefore, hold that the applicant is entitled for receiving salary for the period from 01.03.2006 to 11.02.2011 when he was kept out of service entirely due to illegal action at the end of the respondents.

8. In the conspectus, we allow this OA with a direction to the respondents to pay salary to the applicant from 01.03.2006 to 11.02.2011. We, however, make it clear that the applicant shall not be entitled for payment of any interest on the arrears amount of

salary. The respondents are further directed to pay the arrears of salary within a period of three months from the date of receipt/production of a copy of this order.

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)

Sd/-
(K.N.Shrivastava)
Member (Admn.)

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