

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**LIBRARY**No. O.A. 350/00648/2016
M.A. 350/00433/2016

Date of order: 4.7.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Madan Prasad,
Son of Late Bhoj Ram Prasad,
Resident of Quarter - 'K' Type, 28/2,
Post - Office - Burnpur,
Police Station - Hirapur,
District - Burdwan,
Pin - 713325.

Applicant

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1. The Union of India,
Through the Secretary,
Ministry of Steel,
Government of India,
New Delhi - 110 001.
2. The Steel Authority of India Limited -
IISCO Steel Plant,
Having its Office at 50, Chowinghee Road,
Kolkata - 700 071.
3. The General Manager,
IISCO Steel Plant,
Burnpur Unit,
Post Office - Burnpur,
Police Station - Hirapur,
District - Burdwan,
Pin - 713325.
4. The Chief Personnel Manager,
IISCO Steel Plant,
Having its office at
50, Chowinghee Road,
Kolkata - 700 071.
5. The Assistant General Manager (Personnel),
IISCO Steel Plant,
Burnpur Unit,

Post Office – Burnpur,
Police Station – Hirapur,
District – Burdwan,
Pin Code No. 713325.

.. Respondents

For the Applicant : Mr. A.K. Das, Counsel

For the Respondents : None

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- (a) Direction be given upon the respondents specially the respondent No. 5 to forthwith rescind/cancel and/or withdraw the Notice of superannuation under Reference No. GPD/5879 dated 26.7.2007 issued to the petitioner.
- (b) A Direction be given upon the respondents specially the respondent No. 5 to calculate and pay entire salary to the applicant for the period from the purported date of superannuation to the actual date of superannuation with interest accrued upon that amount.
- (c) A Direction be given upon the respondents to produce all the relevant documents of the case before the Hon'ble Tribunal in order to render conceivable justice to the applicants.
- (d) To pass such other order or orders and/or further order as to Your Lordships may deem fit and proper for the ends of justice.

2. Heard Ld. Counsel for the applicant, examined pleadings, documents on record. None appears for the respondents.
3. The applicant's submissions, as articulated through his Ld. Counsel, is that the applicant was appointed in 1984 in the post of R. General Extraman with the respondent authorities through employment exchange. As per the school leaving certificate, the applicant's date of birth is 22.1.1951 and, accordingly, his date of superannuation ought to have been fixed on 31.1.2011. Much to his prejudice, however, the respondent No. 5, i.e. the Assistant General Manager (Personnel), IISCO Steel Plant, Burnpur, issued him a superannuation notice on 26.7.2007 stating that as per Company's Record, the applicant is due to

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superannuate on 9.1.2008 on attaining the age of 60 years. The applicant represented on 31.12.2007 against such superannuation notice but without consideration of the same, the applicant was made to superannuate and, hence, being aggrieved, has approached the Tribunal claiming the abovenoted relief.

4. The respondents have, per contra, submitted their counter affidavit in reply and have disputed the maintainability of the application on the grounds of delay in filing the application.

On merit, the respondents have controverted the claim of the applicant with a service record card of the applicant which shows that he was 36 years of age during entry on 9.1.1984 and, hence, would attain 60 years on 9.1.2008.

According to the respondents, the transfer certificate issued by the school authorities that the applicant had cited in his support is not an acceptable document as per the guidelines in the Model Standing Order. Accordingly, the applicant's age was to be ascertained through medical examination as per terms and conditions of appointment letter and, according to such medical examination, the age of the applicant was assessed to be 36 years on 9.1.1984, which the applicant reportedly accepted without protest. The respondents would refer to the applicant's acknowledgement of service report card, whereon he had recorded his signature, thereby concurring to the facts as noted therein.

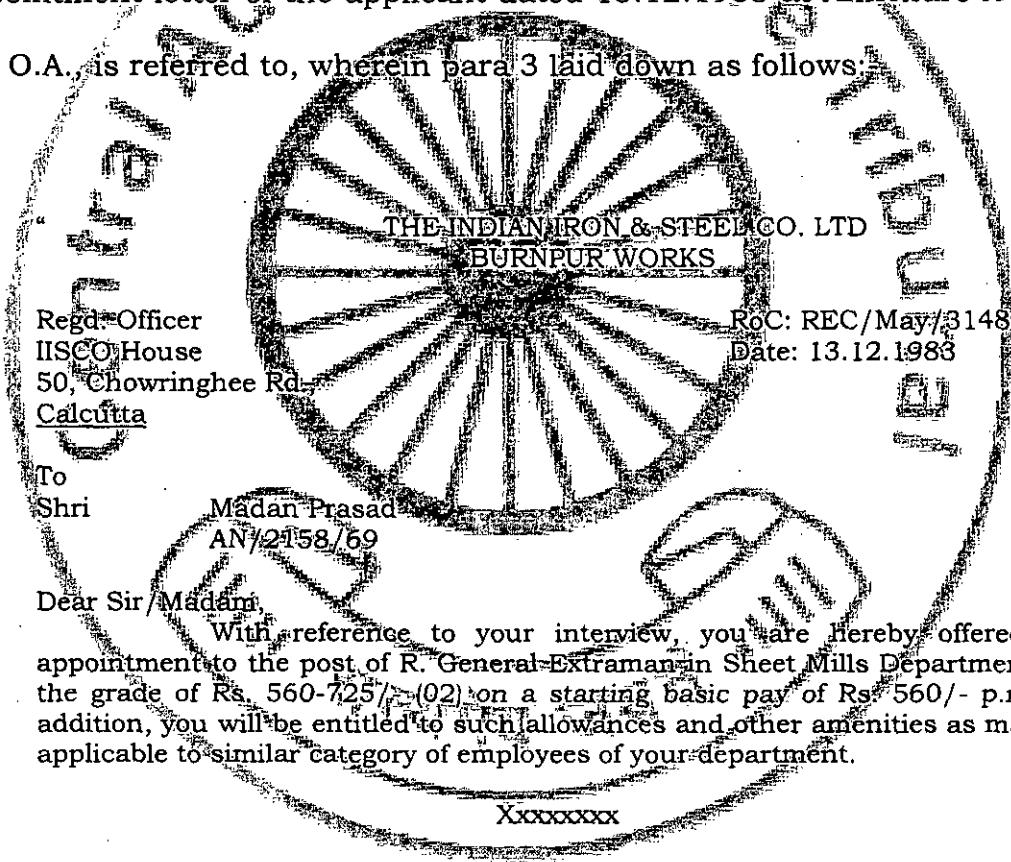
The respondents have also averred that the applicant had collected his entire retirement dues upon superannuation.

5. The respondents have assailed the present O.A. on the ground that it suffers from undue delay, having been filed nearly 8 years after the applicant's superannuation. By way of explanation, the applicant's Ld. Counsel would argue that as the applicant had approached the Hon'ble

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High Court of Kolkata in WP No. 1899(W)/2008 and with CAN No. 5340 of 2015 and, as the said Writ Petition was disposed of only on 29.1.2016 directing the petitioner to carry his grievance to the Tribunal, the plea of the application being barred by limitation, does not arise. We note that there is a minor delay of 71 days in filing this O.A. after the Hon'ble High Court had permitted the petitioner to carry his grievances to the Tribunal. Hence, the delay is condoned and M.A. No. 433 of 2016 praying for condonation of delay is disposed of accordingly.

6. In order to adjudicate on the merits of the matter, at the outset, the appointment letter of the applicant dated 13.12.1983 at Annexure A-2 to the O.A. is referred to, wherein para 3 laid down as follows:



iii) You will have to produce, in original, a certificate in support of your age, date of birth (in case of non-availability of such certificate you will have to accept the age to be assessed by the Company's Medical Officer) educational qualification and citizen's certificate (in case you have migrated from Pakistan/Bangla Desh). True copies of certificates duly attested should be furnished by you at the time of joining.

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It is clear from the above that while applicant was liable to produce the original certificate in support of his age and date of birth and in case such certificates were non-available, he would have to subject himself to

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be assessed by the Company's Medical Officer to ascertain his age at the point of entry in the respondents' service. The respondents have averred that the applicant was assessed medically as of 36 years of age on 9.1.1984, the date of his entry into service. The applicant does not deny that he was ever examined by a Medical Board of the respondent authorities except to contend that no authentic documents on medical examination for his age determination have been furnished by the respondents in support of their contentions.

Admittedly, the applicant has placed his signature in his service report card where his age during his entry into the service of the respondents has been recorded. The applicant contests such recording as an acknowledgement. According to the applicant, the respondents used to keep the columns for age, height etc. blank on the plea that such information would be filled in subsequently. The respondents would have obtained his signature prior to filling up such details of his service record card. Hence, he had trustingly recorded his signature in the service record card and the respondents have interpolated his age and date of birth incorrectly in his service record at a later date.

In his representation, which the applicant preferred 5 months after receipt of his superannuation notice, he had admitted that his service record requires to be rectified with reference to his school leaving certificate which has recorded his date of birth as 22.1.1951.

The applicant had requested for correction of his service records on 31.12.2007, five months after receipt of his superannuation notice and 10 days before his superannuation. Although the applicant has referred to the date of birth as recorded in his school transfer certificate and supporting communication from Employment exchange, the respondents

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have held such certificate to be unacceptable as per their Rules. The Rules/guidelines remain unchallenged.

The applicant has undisputedly superannuated in January, 2008 and has not controverted the averments of the respondents that he had availed of all the retiral benefits. Such being the situation, the employer-employee relationship has ceased to exist and it is not reasonable to expect the respondents to allow the applicant any further benefits for a period from 2008-2011 as claimed by the applicant when he had not performed any duties with the respondent authorities in any capacity whatsoever. Further, the service report card of the respondents reportedly based on the medical examination of the applicant clearly records his date of birth as 36 years as on 9.1.1984 and the applicant has objected to this by stating that the column of his age was left blank and he was made to sign in advance by the respondent authorities on the said report card. Such averment, nearly eight years after his superannuation, is hardly convincing.

We are also guided by the Hon'ble Apex Court ratio in ***State of Uttar Pradesh v. Shiv Narayan Upadhyay (2005) 6 SCC 49*** which held that a challenge to the date of birth as recorded in the Service Book made on the eve of retirement should clearly not be entertained and a Court or Tribunal should be slow in issuing directions for correction of date of birth or in granting relief or in continuation of service.

Further, in ***State of Assam v. Daksha Prasad Deca 1971(2) SCR 14 (SC)*** the Hon'ble Apex Court has held that, in the controversy relating to date of birth it is the service record, which has the primacy and superannuation etc. will be determined on the basis of service record and not on what the employee claims to be his date of birth unless the service record is first corrected in conformity with the appropriate procedure.

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In *State of Tamil Nadu v. T.V. Venugopalan (1994) 6 SCC 302*, while commenting on the power of judicial review, the Hon'ble Apex Court had held that in exercise of power of judicial review, the Courts or Tribunals will not reappreciate the evidence to reach a different conclusion when the application for correction was rejected by the authorities.

In *Executive Engineer, Bhadrak RNB Division, Orissa v. Rangadhar Mullick (1992) 5 SLR 77*, the Hon'ble Apex Court on the same lines as decided in *Union of India v. Harnam Singh (1993) 2 SCR 42 (SC)*, had directed that as Rule 65 of the Orissa General Financial Rules stipulated that representations made for correction of date of birth near the time of superannuation shall not be admitted, the action taken by Government in rejecting his representation was in no manner illegal or against the principles of natural justice.

In *Regional Provident Fund Commissioner v. Bhavani AIR 2008 SC 2957* as well as in *Eastern Coal Fields v. Bajrangi Ravidas (2014) 134 AIC 55 (SC)* it was held that cases of respondents should not be considered as they have applied at the fag end of their career for corrections of their date of birth in the appellant's records, a practice which has been strongly discouraged by the Hon'ble Apex Court.

In *State of Madhya Pradesh v. Prem Lal Shrivastava AIR 2011 (SC) 3418 at 3420* the Hon'ble Apex Court has directed that it needs to be emphasised that in matters involving correction of date of birth of a Government servant, particularly, on the eve of his superannuation or at the fag end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing directions of correction of date of birth recorded in the Service Book at the time of entry into any Government service.

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8. After ascertaining the facts and also in adherence to the ratio in various judicial pronouncements on the subject of correction of date of birth at the fag end of service career of the employee without prior correction of service records, we find no merit in this O.A. The O.A. is accordingly dismissed on merit.

M.A. No. 433 of 2016 seeking condonation of delay in filing the O.A. is disposed of as in para 6 above.

There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member

16/01/2017