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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.350/00011/2015

Dated of order: 06.01.2016

PRESENT:

THE HON'BLE MR. JUSTICE G.RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Shila Ghosh, aged about 60 years, retired employee of Steel Authority of India, wife of Shri Shibnath Ghosh residing at 39, R.K.Chatterjee Road, Kolkata-700 042.
2. Rabindra Nath Bose, Village Debipur, PO. Digha, District 24 Parganas (North), Pin-743248.
3. Susanta Roy Chowdhury, 43/40, Kalipara Mukherjee Road, Kolkata-700 008.
4. Utpal Roy Rakshit, 317/A/12, B.B.Chatterjee Road, Kolkata-700 042.

.....Applicants

For the Applicant: Mr. B.C.Paul
Mr. S.Bhattacharyya
Counsel

-Versus-

1. Union of India through the Secretary, Ministry of Heavy Industry & Public Enterprises, Department of Public Enterprises, Public Enterprises Bhawan, Block No. 14, CGO Complex, New Delhi-110 003.
2. The Chairman, Steel Authority of India, Lodhi Road, New Delhi-110003.
3. The Deputy General Manager (Personnel), Steel Authority of India Ltd., Lodhi Road, New Dehi-110 003.

4. Sr. Manager (Personnel – EC & IR), Steel Authority of India Ltd., Lodhi Road, New Delhi-110 003.

5. Deputy General Manager (Pers –EC, PP & HRI) Steel Authority of India Ltd., Lodhi Road, New Delhi-110 003.

6. The Executive Director (P&A), Steel Authority of India Ltd., Central Marketing Organisation, Ispat Bhavan 40, Chowringhee Road, Kolkata-700 071.

7. The Secretary, All India Co ordination Committee of SAIL Employees Unions, Ispat Bhavan, 40 Chowringhee Road, Kolkata-700 001.

.....Respondents

For the Respondents: Mr.A.Gangopadhyay, Counsel

ORDER

JUSTICE G.RAJASURIA, JM:

The Epitome and the long and the short of the germane facts absolutely necessary for the disposal of this original application would run thus:

2. The Applicants filed this Original Application seeking the following reliefs:

"(a) To issue Direction/Directions upon the respondents to certify and transmit to this Hon'ble Tribunal the records of the case in connection of the impugned notices being Annexure: "A-6" and "A-7" dated 18.12.2013 and 24.04.2014 respectively herein so that conscientable justice may be administered by quashing the same;

(b) To issue Direction/Directions upon the respondents to rescind, recall, revoke and withdraw the impugned notices dated 18.12.2013 and



24.04.2014 by the respondent no.1 being Annexure- "A-6", "A-7" herein and to forebear from giving any effect or further effect to the same;

(c) Any other appropriate, order or orders and/or direction or directions;

(d) Costs of and incidental to this application;

(e) Pass such other or further orders and/or direction or directions as may deem fit and proper;

(f) Leave may granted to file this application jointly under Rule-4 (5) (a) A.T. Act, 1987."

(extracted as such)

3. Heard both.

4. The Steel Authority of India Limited (in short 'SAIL') is

a Public Sector undertaking of the Government of India. The Applicants, herein, are the retired employees of the SAIL. The grievance of the Applicants as aired in the OA, as well as in the submission of the learned counsel for the applicants could succinctly and precisely be set out thus:

The Applicants got retired when the Leave Encashment Rule prevailing in SAIL was to the effect that the employee who retired would get the maximum encashment of 240 days Half Pay Leave (in short 'HPL') in his credit, in addition to 300 days of Earned Leave (in short 'EL'). However, after the retirement, to the detriment of the Applicants, the Leave Rule is alleged to have been amended and changed to the effect that the HPL and EL putting together should not exceed 300 days for



encashment. Annexure- A/6, the Office Order dated 18.12.2013 is extracted hereunder for ready reference:

"Pending final decision on the issue, Leave Encashment at the time of retirement will be restricted to 300 days (both EL & HPL taken together) as per DPE letter No. 2(14)/2012-DPE (WC) dated 17.07.2012.

No communication of Half Pay Leave would be permissible to make up the shortfall in Earned Leave.

The above shall come into force with immediate effect.

This issues with the approval of the Competent Authority."

Annexure-A/7, is another office order dated 24.04.2014 which is also extracted hereunder for ready reference:

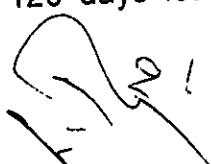
"Further to Office Order No. PER/PP/HPL/13/1 dated 18.12.2013, it has been decided that the aforesaid order shall be effective from 29.07.2013. Accordingly, Leave Encashment at the time of retirement will be restricted to 300 days (EL & HPL taken together) with effect from 29.07.2013.

Pursuant to the above, necessary adjustments shall be made from the payments which are due from the company to the employees who have superannuated from the company between 29.07.2013 and 18.12.2013 in case payment of leave encashment at the time of retirement has been made to them beyond 300 days (EL & HPL taken together).

Other terms and conditions of the Office Order dated 18.12.2013 remain unaltered.

This issues with the approval of the Company Authority."

Those two office orders cannot take away the right of the retired employees of their HPL encashment of full 120 days leave (i.e.



240 days of HPL) as contemplated in Annexure-A/3. There is nothing to indicate that the Leave Encashment Rule in Annexure-A/3 was amended. The Chairman had no authority to amend the Leave Encashment Rules. Only the Board of SAIL had the authority to amend such Rules. As such, the Office Orders dated 18.12.2013 and 24.4.2014 are illegal and accordingly the applicants would pray for allowing this OA.

Per contra, the learned counsel for the respondents presenting the written notes of arguments would submit his argument placing reliance on the reply which could succinctly and precisely be set out thus:

No doubt earlier to 29.7.2013, the date of communication sent by the Central Ministry of Steel to SAIL, the employees of SAIL who retired got Encashment of 240 days of HPL (i.e. 120 days of full pay) along with the Encashment of 300 days EL. However, with effect from 29.7.2013 the retired employees were not entitled to such total 420 days of leave encashment, however, even those employees were paid as per the old procedure and hence, such excess payments were ordered to be recovered, in view of Annexures-A/6 & A/7. Absolutely, there is no embargo on the part of the SAIL to pass such orders. The Central Government employees are getting 300 days of encashment of leave only in total so to say EL and HPL putting together, and in such a case the PSU being the public



sector undertaking of the Central Govt. Cannot have a different rule and as such in consonance with the direction given by the Ministry of Steel, such annexures-A/6 & A/7 emerged which cannot be found fault with. Accordingly, he would pray for the dismissal of this OA.

5. The point for consideration is as to whether annexures-A/6 & A/7, referred to supra, could be made to be operative as against the employees who retired when the Leave Encashment Rule was to the effect that they could get encashment upto 240 days of HPL (i.e. 120 days of full pay).

6. At the outset itself, we would like to extract a part of Annexure-A/3, rules for encashment of leave:

"8.0. ENCASHMENT OF HALF PAY LEAVE:

Encashment of half pay leave will be allowed subject to a maximum of 240 days HPL. The encashment of HPL will be allowed in the following cases:

- i) On separation from the Company on attaining the age of superannuation;
- ii) Death while in service;
- iii) Permanent total disablement of an employee;
- iv) Employees in the age of bracket of 57 years and above who separate from the Company on acceptance of their resignation;

Other conditions, governing the encashment of Half Pay Leave, will be the same as in the case of Earned Leave Encashment."

As per para 8, cited supra, HPL encashment of 240 days could be encashed which means that an employee would get full pay of 120 days. However, para 9.0 of Annexure-A/3 would run thus:



"9.0. The Chairman reserves the right to modify, cancel or amend any of the provisions of these rules without prior notice."

As such, Annexure-A/3 the rule for encashment empowers the Chairman of SAIL to modify, cancel or amend the Rule without prior notice. But it is pertinent to notice that no power is vested with the Chairman, SAIL to amend, modify or cancel such rule with retrospective effect and that too, in respect of the employees who already retired when para 8 extracted supra was in vogue.

7. It is the fundamental principle of law as well as principle of natural justice, in view of the maxims "*jure naturae aequum est neminem cum alterius detriment et injuria fieri locupletiorem*" (by the law of nature, it is just that no one should be enriched to the detriment and injury of another) and "*Jura naturae sunt immutabilia*" (the laws of nature are unchangeable). Our mind is reminiscent and redolent of two other maxims – (1) "*Lex prospicit, non respicit*" (the law looks forward, not backward) and "*Nova constitution futuris formam imponere debet, non praeteritis*" (A new enactment ought to impose form on what is to come, not on what is past/A new regulation should not apply retroactively but from its enactment). Here, the annexure-A/6 extracted supra would unambiguously and unequivocally contain the phrase "pending final decision on the issue" which means that the rule in the annexure-A/3 was not amended even on 18.12.2013. However, Office Order dated 18.12.2013 (Annexure-A/6) was



issued to the detriment of the employees who retired by that time. Annexure-A/7 dated 24.4.2014 would delineate and mandate that with effect from 29.7.2013, only for 120 days encashment should not be made available to the retired employee, so to say even to those who retired after 29.7.2013 and before the issuance of the office order dated 24.4.2014. Now the validity of such direction as against the applicants has to be analyzed.

8. The Learned counsel for the applicants would vehemently argue that the office order dated 24.4.2014 (annexure-A/7) should not be taken as amendment to annexure-A/3 the rule for encashment of leave; in *stricto sensu*, the amended rules are not made available. The learned counsel for the SAIL would submit that the said office order was issued with the approval of the competent authority which means the chairman SAIL as contemplated in para 9 of annexure-A/3. Even for arguments' sake it is taken that the chairman issued such office order (Annexure-A/7), we are at a loss to understand as to how the chairman, SAIL, without any legal backup could issue such order with retrospective effect. The contention of the learned counsel for the applicants is that only the Board of Directors had the competency or authority to amend the rule relating to leave encashment and not the chairman, SAIL as provided in the rules. In respect of his plea, absolutely, there is no provision enabling the learned counsel for the applicants, to buttress and fortify it. A person



cannot blow hot and cold or approbate and reprobate at the same time and he cannot shoot at his own foot. The claim of the applicants itself is based on annexure-A/3 which alone empowers the applicants to get 120 days encashment of 240 days HPL. Rule 9 contemplates that the chairman can modify or amend any provision of such rules without prior notice. Here in this OA, there is no challenge to the validity of the rules for encashment of leave. As such, the contention as put forth by the learned counsel for the applicants that the chairman had no power to amend annexure-A/3 is neither here nor there.

The contention as put forth by the side of the Respondents is that the Ministry of Steel and Mines issued direction on 29.7.2013 and it weighed very much with the SAIL and that was why the date 29.7.2013 was chosen as the date for change in the quantum of encashment of HPL. It has to be observed that annexure A/7 emerged only on 24.4.2014 and on that date alone the rule relating to encashment of leave was changed and finalized, even as per the contention of the SAIL and accordingly, if taken, it is not known as to how that amended rule could be applied as against those who retired before 24.4.2014 against their hope and legitimate expectation at their retirement that they would be getting encashment of 240 days of HPL accrued to their credit. The concept of principles of natural justice would also include the doctrine "promissory estoppel". The



retirees are governed by the rules existing as on the date of retirement. Wherefore, curtailment of their entitlements to their detriment certainly would be against the principle of legitimate expectation and also would be violative of the doctrine of promissory estoppel and no more elaboration in this connection is required. As such we are of the considered view that all those who retired anterior to 24.4.2014 should be governed by the unamended annexure-A/3, so to say those employees would be entitled to encashment of leave upto the maximum of 240 days of HPL. Accordingly, it is ordered that if it is paid already, the same should not be recovered and if not paid, it should be paid to them.

9. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice G. Rajasuria)
Member (Judl.)