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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4929 of 2015

Kaushal Kant Pandey aged about 52 years, S/o Shri A.N. Pandey, R/o Plot No.4, Block No.38 Nehru Nagar (West) – 490020 Bhilai, Tahsil and District Durg (Chhattisgarh)

----Petitioner

versus

1. Union of India through Secretary Ministry of Steel and Mines Government of India, New Delhi – 110001
2. Steel Authority of India Limited, through Chairman Steel Authority of India, Ispat Bhawan, Lodhi Road, New Delhi
3. Manager (P.E.E.), Bhilai Steel Plant, Executive Establishment, Bhilai District Durg (Chhattisgarh)
4. Chief Executive Director, Bhilai Steel Plant, Steel Authority of India Ltd., Bhilai – 490001, Tahsil and District Durg (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri V.G. Tamaskar, Advocate
For Respondents No.2 & 3	:	Shri Kashif Shakeel, Advocate

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

4/1/2016

1. The present writ application assails order dated 26.10.2015 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting, Bilaspur (hereinafter called 'the Tribunal') in O.A. No. 329 of 2013. The Tribunal held that the Petitioner having resigned, was not entitled to the benefit of leave encashment under Rule 6.6 of the Leave Encashment Rules.

2. Learned Counsel for the Petitioner submitted that Rule 6.6 was amended on 10.3.2008. It has necessarily to be prospective in nature. The Petitioner was therefore entitled to the benefits of leave encashment from his date of appointment as Junior Manager on 4.1.1984 at least till 10.3.2008 even if his claim till 22.11.2011 was not sustainable. It was next submitted that the amendment in the leave encashment rules was not

enforceable in absence of having been passed by the Board of Directors and approved by the Central Government. It was lastly submitted that if the Rules are *ultra vires*, it being a pure question of law can be raised in the writ petition for the first time even if it was not raised before the Tribunal as the latter did not have the power to declare the Rules *ultra vires*.

3. Learned Counsel for the Respondents No. 2 and 3 submitted that Rule 6.6.1 was amended on 28.10.2008 providing that no claim for leave encashment was acceptable in cases of resignation. The Petitioner's claim from 4.1.1984 till 10.3.2008 is therefore misconceived. Further more, he did not fall within the exception of Rule 6.6.4 which provided for payment of leave encashment only for employees in the age bracket of 57 years even in case of resignation. It was lastly submitted that there was no challenge to the Rules before the Tribunal. The grounds urged being factual in nature ought to have been raised before the Tribunal first.

4. We have considered the submissions on behalf of the parties and are of the considered opinion that the impugned order calls for no interference.

5. The Petitioner was appointed as a Management Trainee on 7.1.1983 and on completion of training, he was appointed as Junior Manager with effect from 4.1.1984. He resigned with effect from 22.11.2011. Earlier, O.A. No. 1061 of 2012 preferred by him was disposed to consider his representation for leave encashment in a time bound manner. The representation having been rejected on 18.3.2013 on twin grounds that it was not to be accepted in cases of resignation, and that the Petitioner did not fall in exception age bracket of 57 years, holding that he was only 51 years and six months, led to the institution to the present Original Application.

6. Rule 6.6.1 of the Leave Encashment Rules was amended on 10.3.2008 providing that leave encashment was not to be granted in cases

of resignation. The Petitioner submitted his resignation thereafter which was accepted on 22.11.2011. After amendment of the Rules, the prohibition was absolute in cases of resignation. An exception was carved out only with regard to those who may be in the age bracket of 57 years on the date of resignation. The Petitioner did not fall in that category. We are unable to accept the submission on behalf of the Petitioner for truncating Rule 6.6.1 into two parts by treating 10.3.2008 as the cut off date. After 10.3.2008, the prohibition was absolute as held hereinbefore. To accept such contention would be reading something into Rule 6.6.1 not provided for therein virtually amounting to redrafting of the Rule.

7. It is also not in dispute that the Petitioner did not fall in the exception under Rule 6.6.4 as he was only 51 years and 6 months on the date that his resignation was submitted.

8. A pure question of law can be raised at any stage even before the appellate forum. But, foundational facts for the same must be laid at earlier stages. If the validity of a rule is challenged and the grounds of challenge constitute a mixed question of law and fact, it cannot be urged for the first time in the writ petition itself without having laid foundation for it on facts before the Tribunal first. Whether there was a resolution of the Board of Directors and the approval from the Central Government or not are questions of fact. Once these facts are established, then only the issue for invalidity of the Rules in absence of the same will arise for consideration. In law, there will be a presumption that all Government acts have been performed properly and in regular course of business. If the Petitioner alleges lack of any resolution by the Board of Directors and approval by the Central Government, it was for him to lay foundation for the same before the Tribunal. Except for a bald statement in the writ petition that there was no resolution of the Board of Directors or approval from the Central Government, no other facts have been mentioned. The question that the

Tribunal could not declare the rule as *ultra vires* does not arise as there was no challenge to the same before the Tribunal.

9. We therefore find no reason to interfere. The writ petition is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE