IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13327 of 2019

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1. The Union of India through the Secretary, Department of Post, Government of India, Sansad Marg, Dak Bhawan, New Delhi- 110001.
2. The Director General, Department of Post, Sansad Marg, Dak Bhawan, New Delhi- 110001.
3. The Chief Postmaster General, Bihar Circle, Meghdoot Bhawan, Patna- 800001
4. The Postmaster General, Northern Region, Muzaffarpur, Pin- 842002
5. The Director of Postal Services, Northern Region, Muzaffarpur- Pin - 842002
6. The Director of Accounts(Postal) Bihar, G.P.O. Campus, Patna- 800001
7. The Superintendent , R.M.S. U-dn, Muzaffarpur- 842001
8. The H.R.O. , R.M.S. U-Dn, Muzaffarpur- 842001
9. The S.R.O. , R.M.S. U-Dn, Chapra- 841301

... ... Petitioner/s

Versus

Udai Kumar Mishra Son of Ram Jee Mishra, Resident of Village- Banni, Post Office- Nagra, District- Saran(Bihar), Pin- 841442

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kamal, Advocate
For the Respondent/s	:	Mr. Debanjan Chowdhary, Advocate
		Mr. Omprakash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 27-07-2022

Petitioners-Union of India and others have assailed the order dated 05.10.2018 passed in OA No. 50/832/2018 by the Central Administrative Tribunal, Patna Bench, Patna.

02. The grievance of the respondent-Udai Kumar Mishra was that he is entitled to pension and retiral benefits with reference to the service rendered from 29.01.1989 till 31.01.2018. During

the intervening period from 29.11.1989 to 24.11.2013 he was working as daily wager. Initial appointment in the year 1981 was casual worker. From 29.11.1989 to 24.11.2013 temporary status was assigned, thereafter, he was brought on Multi Task Staff (MTS). He has attained age of superannuation and retired from service on 31.01.2018. In this backdrop, question for consideration is which are the services to be computed towards extending retiral benefits and fixation of pension. Counting of service is bound by the Circular vide Annexure-P/5 dated 26.04.1991. The relevant portion reads as under:-

> *"6. 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularisation as a regular group 'D' official."*

03. It is also relevant for the purpose of counting 50% of service rendered under temporary status.

04. Learned counsel for the petitioners-department vehemently contended that having regard to the service particulars at Annexure-P/6 respondent is not entitled to counting any service for fourteen years three months and twenty days and the qualifying service would be nine years and nine days has been taken note for the purpose with reference to policy decision and it would be four years two months and seven days. No doubt qualifying service

would be eight years twelve months nine days and it is rounded off to nine years nine days for the purpose of extending retiral benefits and pension. Employee must have completed ten years of service to claim pension. Shortage of less than one year would come in the way in extending benefit of pension to respondent. Therefore, there is infirmity in the order of the Tribunal in not appreciating the service particulars of the respondent read with policy decision of the petitioners dated 26.04.1991 so as to how to compute the temporary service of daily wager service etc. It was also submitted that he was a casual worker/temporary worker. His job was limited in a month whenever job was provided he used to attend on the remaining days he had no work. It has been shown as absent. Such absence for work in service has been recorded as fourteen years three months twenty one days (During the period from 29.11.1989 to 24.11.2013).

05. In the light of these facts and circumstances order of the Tribunal dated 05.10.2018 passed in O.A. No. 50/832/2018 is liable to be set aside.

06. Per contra, learned counsel for the respondent resisted the aforesaid contentions of the petitioners and submitted that there is no infirmity in the order of the Tribunal. It was beyond the control of the respondent in not discharging the duties of the post like casual worker/temporary employee on various dates in other words petitioners prevented respondent in discharging the duties of the post of casual worker. Therefore, the aforesaid period is to be considered for the purpose of computing service while extending pensionary benefits. The respondent rendered service to petitioners-department in the year 1981 to 1989 as a casual labourer and, thereafter, he was awarded temporary status from 29.11.1989 to 24.11.2013 and further he was appointed as MTS till 31.01.2018.

07. Heard learned counsels for respective parties.

08. Core issue involved in the present petition is whether respondent is entitled to retiral benefits and pension while computing temporary service during the absent period or not? Further for the purpose of extending retiral benefits and pension it is less than one year of service shortage.

09. Undisputed facts are that respondent was appointed as a casual worker with the petitioners in the year 1981 and continued to work till he was brought on temporary status on 29.11.1989. Even while holding temporary status he was working till 24.11.2013 he was given MTS status. In this backdrop, it is necessary to reproduce Annexure-P/6, the calculation sheet for pension and DCRG which reads as under:-

"Department of Posts, India
O/o the Superintendent RMS 'U' Division Muzaffarpur

Calculation Sheet

For pension and DCRG

1. Name of Official:-Sri Uday Kumar Mishra
2. Date of birth:-21.01.1958
3. Date of entry in the Department:-29.11.1989 as TS/DW & 24.11.2013 as MTS
4. Date of retirement:-31.01.2018(A/N)

(A)(1) Qualifying service:

	Year	month	Day
	2013	11	23
	1989	11	29
TS Period	23	11	25
Non qualifying Service in TS (-)	14	03	21
Qualifying service in TS	09	08	04
	Year	month	Day
Date of retirement	2018	11	31
Date of entry in MTS	2013	11	24
	04	02	08
Non Qualifying Service in MTS	00	00	01
Qualifying Service in MTS	04	02	07

02.09.2015 to 02.09.2015=01 day Strike

……………………………………………………

Total = 01 day

50% of Casual service (counted towards retirement benefit):- 04 years 10 months 02 days

Net Qualifying Service	08	12	09

Net qualifying service:- 09 year 00 month 09 days.

18 Six monthly period.

(B) Last pay= Rs. 22,800/-

(C)Pension 50% of last pay drawn:- Rs. 22,800/-x50/100=11,400/-

(D) Family pension

Normal rate $\frac{30x22,800/-}{100}$ Rs. 6,840/- Subject to minimum of Rs. 9,000/-

(E) Enhance rate:-11,400/-

(F) DCRG = Pay Rs. 22,800+D.A. @5%) Rs. 11140 = Rs. 23940/-

23,940/-x18

…………….. =Rs. 1,07,730/-
4
Commuted value of pension-40%
(F) 40 % of pension 8.194x12
=4560x8.194x12=Rs.4,48,375=Rs.4,48,376/-
(G) Residual pension after commutation=Rs. 11400-4560=Rs. 6,840/-

Superintendent
RMS "U" Dn Muzaffarpur
Dated:16.01.2018"

10. Calculation of number of days to be counted as duty has been prepared by the concerned official and it has been placed on record as Annexure-P/6.

11. At this juncture, it is necessary to invoke the principle of judicial review. The action based on the subjective opinion or satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion in so far as recording of absence. Even though Respondent was not actually remained absent. He was compelled to not to attend work for want of work on administrative reasons. On this point, recently, Hon'ble Apex Court in the case of **Amrendra Kumar Pandey vs. Union of India and Ors (Civil Appeal Nos. 11473-474 of 2018)** decided on 14.07.2022 reported in **2022 Livelaw (SC) 600** in paras 28 to 37, it is held as under:-

> *"**28.** Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority con-*

cerned, by some such expression as 'is satisfied' or 'is of the opinion' or 'if it has reason to believe' or 'if it considered necessary', the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.

29. *The action based on the subjective opinion or satisfaction, in our opinion, can judicially be reviewed first to find out the existence of the facts or circumstances on the basis of which the authority is alleged to have formed the opinion. It is true that ordinarily the court should not inquire into the correctness or otherwise of the facts found except in a case where it is alleged that the facts which have been found existing were not supported by any evidence at all or that the finding in regard to circumstances or material is so perverse that no reasonable man would say that the facts and circumstances exist. The courts will not readily defer to the conclusiveness of the authority's opinion as to the existence of matter of law or fact upon which the validity of the exercise of the power is predicated.*

30. *The doctrine of reasonableness thus may be invoked. Where there are no reasonable grounds for the formation of the authority's opinion, judicial review in such a case is permissible. [See* ***Director of Public Prosecutions v. Head,*** *(1959) AC 83 (Lord Denning).*

31. *When we say that where the circumstances or material or state of affairs does not at all exist to form an opinion and the action based on such opinion can be quashed by the courts, we mean that in effect* *there is no evidence whatsoever to form or support the opinion. The distinction between insufficiency or inadequacy of evidence and no evidence must of course be borne in mind. A finding based on no evidence as opposed to a finding which is merely against the weight of the evidence is an abuse of the power which courts naturally are loath to tolerate. Whether or not there is evidence to support a particular decision has always been considered as a question of law. [See* ***Reg. v. Governor of Brixton Prison, Armah, Ex Parte,*** *(1966) 3 WLR 828 at p. 841].*

32. *It is in such a case that it is said that the authority would be deemed to have not applied its mind or it did not honestly form its opinion. The same conclusion is drawn when opinion is based on irrelevant matter. [See* ***Rasbihari v. State of Orissa,*** *AIR 1969 SC 1081].*

33. *In the case of* ***Rohtas Industries Ltd. v. S.D. Agarwal and another,*** *AIR 1969 SC 707, it was held that the existence of circumstances is a condition precedent to form an opinion by the Government. The same view was earlier expressed in the case of* ***Barium Chemicals Ltd. and another v. Company Law Board and others,*** *AIR 1967 SC 295.*

34. *Secondly, the court can inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In other words, if an inference from facts does not logically accord with and flow from them, the Courts can interfere treating them as an error of law. [See* ***Bean v. Doncaster Amalgamated Collieries,*** *(1944) 2 All ER 279 at p. 284]. Thus, this Court can see whether on the basis of the facts and circumstances found, any reasonable man can say that an opinion as is formed can be formed by a reasonable man. That would be a question of law to be determined by the Court.*

*[See **Farmer v. Cotton's Trustees,** 1915 AC 922]. Their Lordships observed: "……….. in my humble judgment where all the material facts are fully found, and the only question is whether the facts are such as to bring the case within the provisions properly construed of some statutory enactment, the question is one of law only." [See also **Muthu Gounder v. Government of Madras,** (1969) 82 Mad LW 1].*

*__35.__ Thirdly, this Court can interfere if the constitutional or statutory term essential for the exercise of the power has either been misapplied or misinterpreted. The Courts have always equated the jurisdictional review with the review for error of law and have shown their readiness to quash an order if the meaning of the constitutional or statutory term has been misconstrued or misapplied. [See **Iveagh (Earl of) v. Minister of Housing and Local Govt.,** (1962) 2 QB 147; **Iveagh (Earl of) v. Minister of Housing and Local Govt.** (1964) 1 AB 395].*

*__36.__ Fourthly, it is permissible to interfere in a case where the power is exercised for improper purpose. If a power granted for one purpose is exercised for a different purpose, then it will be deemed that the power has not been validly exercised. If the power in this case is found to have not been exercised genuinely for the purpose of taking immediate action but has been used only to avoid embarrassment or wreck personal vengeance, then the power will be deemed to have been exercised improperly. [See **Natesa Asari v. State of Madras,** AIR 1954 Mad 481].*

__37.__ Fifthly, the grounds which are relevant for the purpose for which the power can be exercised have not been considered or grounds which are not relevant and yet are considered and an order is based on such grounds, then the order can be attacked as invalid and illegal. In this connection, refer-

> *ence may be made to **Ram Manohar v. State of Bihar,** AIR 1966 SC 740; **Dwarka Das v. State of J. and K.,** AIR 1957 SC 164 at p. 168 and **Motilall v. State of Bihar,** AIR 1968 SC 1509. On the same principle, the administrative action will be invalidated if it can be established that the authority was satisfied on the wrong question: [See (1967) 1 AC 13]."*

12. Even if the aforesaid principle is taken into consideration employee is entitled to count a certain period towards computing 50% of service for the purpose of extending retiral and pensionary benefits.

13. Perusal of service calculation sheet of respondent it is evident that even though on various days he has been shown as absent at the same time we have posed a question to the petitioners counsel as to why his services have not been removed for remaining absent for which it is submitted that as and when work was available his services were engaged it was not absent though it is mentioned as absent.

14. In the light of the aforesaid submission and it is not the case of the petitioners that respondent remained absent on his duty in fact he was compelled to remain absent for want of assignment of work. We find *prima facie* that there is no default on the part of the respondent like keeping him away from duty and it is not misconduct also. Further, it is to be noted that petitioners have contended that it is alleged to be absent or out of service and he

had not assailed temporary status on 29.11.1989 and, thereafter, on 24.11.2013 he was brought on MTS cadre.

15. In the light of these facts and circumstances, it is necessary to take note of Hon'ble Apex Court decision in the case of **Union of India and Ors. vs. Rakesh Kumar and Ors** (Civil Appeal No. 3938 of 2017) reported in **(2017) 13 SCC 388**. Para 55 reads as under:-

> *"55 In view of foregoing discussion, we hold;*
>
> *i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.*
>
> *ii) the casual worker before obtaining the temporary status is also entitled to recekon 50% of casual service for purposes of pension.*
>
> *Iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.*
>
> *iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension in deserving cases.*

> *On a request made in wring, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993."*

16. The aforesaid decision has been distinguished by the learned counsel for the petitioners stating that the aforesaid decision is relating to railway employees with reference to 1997 Rules of the Railways. In the present case for the purpose of computing temporary service department has evolved policy decision on 26.04.1991 and the same is required to be taken note for the purpose of computing of service as to whether temporary service is required to be counted in what manner. The Petitioners contention that respondent remained absent for fourteen years, three months and twenty one days cannot be appreciated for the reasons that respondent was prevented in discharging the duties of the post.

17. That apart, for the purpose of extending retiral benefits and pension to the respondent there is a shortage of less than one year. Therefore, whatever the period of absence has been shown it should be treated at least 50% service for the purpose of computing service towards fixation of pension and retiral benefits.

18. We find the petitioners have not made out a prima facie case so as to interfere with the order of the Tribunal. Accordingly, the present petition stands dismissed.

19. At this stage, we noticed that certain discrepancies in calculation of number of days worked by the respondent on substantive and officiating. Therefore, the concerned petitioners-department is hereby directed to re-examine the number of days of work rendered by the respondent and prepare a chart before extending retiral benefits and pension. The respondent is also entitled to interest @ 6% per annum from 1st April, 2018 till actual payment is made.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A