

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.25647 of 2014

Baikuntha Rout

.....

Petitioner

Mr. S. Behera, Adv.

Vs.

Union of India and others

.....

Opposite Parties

Mr. P.K. Parhi, ASGI along with

Mr. Alok Mohanty, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR JUSTICE S.K. MISHRA

ORDER

02.08.2022

Order No.

04.

This matter is taken up by hybrid mode.

2. Heard Mr. S. Behera, learned Counsel appearing for the Petitioner and Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing along with Mr. Alok Mohanty, learned Central Government Counsel for the Union of India-Opposite Parties.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 14.07.2014 passed in O.A. No.777 of 2010 under Annexure-9, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack has rejected the claim of the Petitioner for grant of pension and pensionary benefits admissible to him by dismissing the Original Application.

4. Mr. S. Behera, learned Counsel appearing for the Petitioner contended that since the Petitioner had joined the service from 1970 till 28.06.1994, 50% of his past service rendered should be taken into consideration for the purpose of qualifying service towards pension and pensionary benefits. But without considering the same, denial of pension and pensionary benefits, cannot sustain in the eye of law. Therefore, the Petitioner approached the Tribunal by filing Original Application claiming for sanction of pension and pensionary benefit w.e.f. 01.08.2001, as he joined the Railway in 1970 on casual basis

and worked as such till 17.11.1986. Thereafter, while working in the Railway on such service, intermittently, temporary status was conferred w.e.f. 16.10.1990 and after putting about 31 years of service, on reaching the age of superannuation, he retired from Railway service w.e.f. 31.07.2001. In order to justify his claim, the Petitioner relied upon the Orders of the Central Administrative Tribunal, Cuttack Bench, Cuttack passed in O.A. No.662 of 2003 on 28.07.2004 and O.A. No.571 of 2002, disposed of on 12.05.2005 (*Sukadev Barik v. Union of India*), which has been confirmed by this Court in W.P.(C) No.12250 of 2006, disposed of 17.08.2009. It is contended that the Petitioner, having stood on the same footing, similar benefit should have been extended to him, as he had already rendered 10 years of continuous service. It is further contended that if 50% past service rendered by the Petitioner is counted, the Petitioner is entitled to the benefit of pension and pensionary benefits. But the Tribunal, without any application of mind, rejected the claim of the Petitioner. Therefore, the Petitioner has approached this Court by filing the present Writ Petition.

5. Mr. Alok Mohanty, learned Central Government Counsel appearing for the Opposite Parties-Union of India contended that the Petitioner is not entitled to get the benefit, as claimed in the Writ Petition and, as such, the Tribunal is well justified in passing the Order impugned dated 14.07.2014 in rejecting the claim of the Petitioner for grant of pension and pensionary benefits, as he has not rendered service, as required to get such pensionary benefit. Thereby, he seeks for dismissal of the Writ Petition.

6. Having heard learned Counsel for the Parties and after going through the records, this Court finds that admittedly the Petitioner rendered service w.e.f. 1970 till 28.06.1994. Therefore, 50% past

service rendered would be taken into consideration for sanction of pension, as he is entitled to get benefit. But the said period has not been taken into consideration, though temporary status was conferred on him w.e.f. 16.10.1990 and after putting nearly 31 years of service and on reaching the age of superannuation, he retired from Railway Service w.e.f. 31.07.2001. Therefore, if the period from 16.10.1990 to 31.07.2001 will be taken into consideration, the Petitioner has already rendered more than 10 years service and, as such, he is entitled to get the pension. In addition to the same, if 50% past service w.e.f. 1970 till 28.06.1994 is taken into consideration and that will be added to the temporary status conferred on him, the job itself is pensionable one.

7. Similar matter had come up for consideration before the Tribunal in ***Sukadev Barik*** (supra), wherein the Tribunal has held that the Applicant having rendered more than 10 years of service before his superannuation, he is entitled to superannuation pension, and that 50% of his past service with temporary status shall be counted for the purpose of pension. By holding so, the Tribunal allowed such benefit to Sukadev Barik. Though the same was forming part of the Original Application and the Petitioner approached the Tribunal for consideration of the same, but the Tribunal, in a cryptic order, stated that the decision of the Tribunal relied on by the Applicant has no application, as the facts of those cases are different and distinct from the present Original Application. But nothing has been placed before this Court with regard to the same and, as such, as to how it is distinguishable, nothing has been indicated in the Order passed by the Tribunal. Thereby, it follows that the Tribunal has not applied its mind in proper perspective. Needless to say against the Order dated 12.05.2005 passed in O.A.

No.571/2002, the Opposite Parties had filed W.P.(C) No.12250 of 2006, which was also dismissed by this Court, confirming the Order of the Tribunal. Therefore, we find that there is ample force in the contention of Mr. Behera, learned Counsel for the Petitioner that the judgment/Order passed in *Sukadev Barik* (supra), which is confirmed by this Court, is applicable to the present case.

8. In that view of the matter, this Court is of the considered view that the Tribunal has committed gross error apparent on the face of record by passing the Order impugned on 14.07.2014 stating the decision of the Tribunal relied on by the Petitioner has no application and denied the pension and pensionary benefits, which cannot sustain in the eye of law. Accordingly, the Order dated 14.07.2014 passed by the Tribunal in O.A. No.777 of 2010 is liable to be quashed and is hereby quashed. The Opposite Parties are directed to take into consideration 50% past service rendered by the Petitioner for the period from 16.10.1990 till 31.07.2001, the day he was superannuated from service for the purpose of pension and pensionary benefits and by making necessary determination release the same in his favour within a period of three months from the date of communication of certified copy of this Order.

9. The Writ Petition stands disposed of.
Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

Ashok/Padma

(S.K. MISHRA)
JUDGE