

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 27902 of 2013

Girija S. Panda

.....

Petitioner

Mr. T.K. Patnaik, Advocate

Vs.

Union of India and Another

.....

Opposite Parties

Mr. H.S. Mohanty, Advocate (O.P.2)

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

06.07.2022

Order No.

08.

This matter is taken up through hybrid mode.

2. Heard Mr. T.K. Patnaik, learned Counsel appearing for the Petitioner and Mr. H.S. Mohanty, learned Counsel appearing for Opposite Party No.2.

3. The Petitioner has filed this Writ Petition challenging the order dated 10.09.2013 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, in O.A. No. 563 of 2013 under Annexure-1, by which the Tribunal has not allowed the benefits of continuous service for the period from 28.02.2000 to 31.12.2000 with enhancement of age from 58 years to 60 years.

4. Mr. T. K. Patnaik, learned Counsel appearing for the Petitioner contended that Petitioner, while working as General Manager, NALCO, was sponsored by the NALCO to the Government of India for the post of Director (Production), NALCO, in Schedule 'B' scale of pay of Rs.8500-200-9500/- with effect from the date of assuming

the charge till the date of his superannuation on 31.12.1998, pursuant to the order dated 28.02.1995 under Annexure-2. The said appointment was made in terms of Article 63 (1)(c) of the Article of Association of NALCO. Pursuant to such order, he joined in service and continued. An Office Memorandum was issued on 19.05.1998 enhancing the age of retirement of below Board Level employees of Central PSEs from 58 years to 60 years. Consequently, it is contended that since the age of superannuation was enhanced and since the date of birth of the Petitioner is 03.12.1940, he was required to be retired on 31.12.2000. But he was allowed to retire on 27.02.2000. Therefore, he claims for the differential service benefits as General Manager, NALCO, with effect from 28.02.2000 to 31.12.2000, i.e. the date of his actual superannuation, since his date of birth is 03.12.1940.

5. Mr. H.S. Mohanty, learned Counsel appearing for NALCO, vehemently contended that the Petitioner, being a Board Level employee and having been given tenure appointment of 5 years, was to be allowed to continue till he attains the age of superannuation or 5 years, whichever is earlier. To substantiate the same, he has relied upon the document under Annexure-4 Series, dated 20.06.1998 issued by the Dy. General Manager (HRD), NALCO. The said document clearly states that as per sub-para (c) of DPE OM, the Government has decided that the existing incumbents who have not completed 58 years or 5 years' tenure may continue up to 60 years or completion of 5 years tenure whichever is earlier, and orders in this regard may be issued by the Ministry concerned without reference to the ACC. As the Petitioner's date of birth is 03.12.1940, he would have attained the age of superannuation at the age of 60 years on 31.12.2000, but 5 years' tenure as Director (Production) got completed on 27.02.2000 and, as such, he was superannuated from

service on 27.02.2000. Consequentially, no illegality or irregularity has been committed by the Authority concerned by superannuating the Petitioner on 27.02.2000, as he completed the tenure of '5 years' on the said date.

6. Having heard learned counsel for the parties and after going through the record, it appears that the Petitioner, who was working as a General Manager, was allowed to discharge the duties of Director (Production), NALCO in terms of Article 63 (1)(c) of the Article of Association of NALCO in Schedule 'B' scale of pay of Rs.8500-200-9500/- with effect from the date of assuming the charge till the date of his superannuation on 31.12.1998. While he was so continuing, an Office Memorandum was issued on 19.05.1998 enhancing the age of retirement of below Board Level employees of Central PSEs from 58 years to 60 years. As the Petitioner was posted as a Board Level Employee, therefore, this Office Memorandum raising the superannuation age from 58 years to 60 years cannot have any application to him. But fact remains, vide letter dated 20.06.1998, the Dy. General Manager (HRD), NALCO, intimated to the Government that as per sub-para (c) of DPE OM, the Government has decided that the existing incumbents, who have not completed 58 years or 5 years' tenure, may continue up to 60 years or completion of 5 years' tenure whichever is earlier, and orders in this regard may be issued by the Ministry concerned without reference to the ACC. It is also further mentioned that since the Petitioner's date of birth is 03.12.1940, he would have attained the age of superannuation at the age of 60 years on 31.12.2000, but 5 years tenure as Director (Production) got completed on 27.02.2000. In pursuance of DPE OM cited above, an order revising his tenure of appointment upto 27.02.2000 may therefore be issued. As a consequence thereof, the

Petitioner was superannuated from service with effect from 27.02.2000, as his tenure of 5 years completed on that date, even though because of the enhancement of the retirement age he would have retired on 31.12.2000.

7. Ventilating the very same grievance, the Petitioner had earlier approached this Court by filing OJC No. 18543 of 1998 seeking for a declaration that he is entitled to continue in service till he reaches 60 years of age and, as such, entitled to continue up to 31.12.2000, in view of the Policy decision of the Government of India. After due adjudication, this Court while disposing of the Writ Petition, vide judgment dated 05.09.2003, made the following observation/direction:-

“In such view of the matter, the Petitioner being covered under Clause (c) of paragraph-1 was entitled to the benefits of enhancement of age of superannuation till 60 years or till he completed five years tenure, but he has been illegally deprived of such benefits and made to retire on completion of 58 years as on 31.12.1998. The Petitioner since would have completed a term of five years by 27.2.2000, he could not have continued till completion of 60th year. Thus we are of the considered view that the Petitioner is deemed to have continued in service till 27.2.2000 when he was to complete the 5 years tenure and accordingly entitled to be extended all service benefits on such basis. The order dated 31.12.1998 of the Ministry of Steel and Mines, Department of Mines refusing to extend the tenure beyond 31.12.1998 is quashed. The opposite parties are accordingly directed to extend such benefits as are admissible to the Petitioner within three months hence.”

8. In view of the judgment passed by this Court, as mentioned above, it remains no more *res integra* that the Petitioner had to retired from service on 27.02.2000 on completion of 5 years. Therefore, he is not entitled to continue till completion of 60 years of age, i.e. till 31.12.2000. As such, the claim made by the Petitioner to

continue till 31.12.2000 has been denied by this Court vide judgment dated 05.09.2003. With the self same prayer, the Petitioner approached the Tribunal and the same was denied. As such, claim made by the Petitioner before the Tribunal was grossly barred by the principle of *res judicata*. Thus, the Petitioner cannot and could not have approached the Tribunal seeking self same relief, by filing Original Application.

9. In any case, since the Petitioner had got tenure appointment and completed 5 years of service on 27.02.2000 and the Authorities have made him to retire from service on 27.02.2000, on attaining the age of 5 years of service, as a consequence thereof, the claim of the Petitioner to continue till he attains the age of 60 years on 31.12.2000 cannot sustain in the eye of law. As a result of which, the claim made by the Petitioner, that the benefit should be extended for the period from 28.02.2000 to 31.12.2000 considering the age of retirement at the age of 60 years, cannot sustain and, as such, the Order passed by the Tribunal in rejecting the relief sought by the Petitioner is well justified. Hence, the order passed by the Tribunal does not warrant any interference by this Court.

10. Accordingly the Writ Petition merits no consideration and the same stands dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE