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Ct-08

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**MAT 2157 of 2023**
**with**
**IA No. CAN 1 of 2024**
**CAN 2 of 2024**

**The Director General, Bureau of Indian Standards & Ors.**
**Vs.**
**Ashoke Kumar Ganguli & Anr.**

Mr. Saikat Roy Chowdhury
Mr. Aritra Ghosh
... For the Appellants

Mr. Amal Kumar Mukhopadhyay
Ms. Tithi Mazumder
... For the Respondent no. 1

**Re: <u>CAN 1 of 2024(Section 5)</u>**

1. There is a delay of 38 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 1 of 2024 is thus disposed of.

**Re: <u>MAT 2157 of 2023</u>**

**1.** The appeal is arising out of an order dated 3rd August, 2023 passed in a writ petition filed by the respondent no. 1 for payment of all retiral benefits along with Modified Assured Career Progression

(MACP) benefits since 2008.

**2.** Briefly stated that the petitioner was working as an Attendant with the Bureau of Indian Standards (in short "BIS"), Eastern Region Office since 1984. The departmental proceedings were initiated against the petitioner with issuance of charge-sheet on 19th November, 2008 and culminated in an order of penalty on 29th August, 2016 by which one increment for two-years with cumulative effect vide Memo DDGE/4:2(E-029572) dated 29th August, 2016 was withheld. A statutory appeal was preferred by the petitioner. The statutory appeal was kept pending for a considerable period of time. The petitioner was compelled to file a writ petition being WP 10978(w) of 2017. The writ petition was disposed of by directing the appellate authority to dispose of the statutory appeal within a specific time. Before the statutory appeal could be disposed of, an order of premature retirement was passed against the petitioner under the provisions of Rule 48 of the Central Civil Service (Pension) Rules, 1972 by the Director General of BIS on 30th June, 2017.

**3.** The petitioner has challenged the impugned order dated 30th June, 2017 by filing a writ petition. Learned Single Judge granted an order of stay on 13th July, 2017. Learned Single Judge was of the opinion that unless the respondent authorities were restrained from giving effect to the impugned order dated 30th June, 2017, the said writ petition would become infructuous.

**4.** The said order of the learned Single Judge was unsuccessfully challenged before the Hon'ble Division Bench by the authorities by filing MAT 1350 of 2017. The said appeal was dismissed on merits. The Hon'ble Division Bench on 22nd December, 2017 while disposing of the appeal held that not only the balance of convenience and/or inconvenience was in favour of the petitioner but also the fact remains that there were irregularities on the part of the authorities concerned in issuing an order of compulsory retirement. This order was accepted by the appellant. Thereafter the petitioner joined his service. However, despite joining his service for more than one and a half months, the respondent authorities failed to disburse the salary and allowances of the petitioner. In an application filed by the petitioner being CAN 11245 of 2017, the Coordinate Bench directed payment of the salary and allowances of the petitioner from January 2018 by 15th February, 2018. Thereafter, the salary of the petitioner was required to be paid month by month from February, 2018. The petitioner during the pendency of the writ petition has retired from service upon reaching the age of superannuation on 31st December, 2021.

**5.** In the present writ petition, the petitioner claimed retiral dues including the payment of gratuity amount by taking into consideration the sum of Rs.31,500/- as his basic pay. Such basic pay was payable to the petitioner on 30th June, 2017 on the date of his compulsory retirement. The retiral dues of the writ petitioner was also paid till 30th June, 2017, the date of his compulsory retirement. On the date when the petitioner had actually retired in December 2021, his basic pay was stipulated at Rs.36,500/-.

**6.** Before the learned Single Judge the writ petitioner argued that the aforesaid basic pay should have been taken into consideration for disbursal of the retiral benefits of the petitioner and also for extending the benefits of Modified Assured Career Progression (MACP) benefits since 2008.

**7.** On behalf of the respondent authorities, it was contended that since the petitioner's Annual Performance Appraisal Reports (APARs) were not in accordance with the standard required by the employer, the petitioner's increments/MACP benefits were withdrawn by the employer. Non-satisfactory performance of the petitioner was also one of the reasons for compulsory retirement of the petitioner.

**8.** Learned Single Judge during the pendency of the writ petition directed disclosure of APARs by filing affidavit. However, we find from the record that only a brief summary of the APARs of the writ petitioner was given at page 105 of the stay petition and the entire APARs was not produced. Although the learned Single Judge recorded that the learned advocate representing on behalf of the employer had submitted that no APAR was brought on record by way of filing additional report, however, we find that at serial no. 11 at page 105 of the Stay petition a brief summary of APARs of the petitioner has been disclosed and it is claimed that the said summary has been extracted from the original record. However, significantly the original record was never produced before the learned Single Judge. Moreover, we feel that the employer proceeded with the matter with undue haste and passing an order of compulsory retirement of the petitioner in mala fide exercise of power arbitrarily on 30th June, 2017 when the statutory appeal was pending. The said attempt is to nullify the statutory appeal preferred by the writ petitioner with regard to the penalty imposed on 29th August, 2016. The order of compulsory retirement and the order of penalty cannot stand together. In fact, the order of compulsory retirement is more harsh comparing to the penalty imposed on 29th August, 2016. It is significant to mention that the order imposing penalty on 29th August, 2016 was set aside by the appellate authority on 24th July, 2017 i.e. after the order of compulsory retirement has been stayed by the learned Single Judge in this writ petition and the petitioner was reinstated on 30th July, 2017.

**9.** It must be presumed that at the time when the order of penalty was imposed all relevant records were available with the authorities concerned including the mitigating factors in deciding the quantum of punishment. The petitioner was also not paid the salary, since his reinstatement, pursuant to an order passed by the learned Single Judge. The petitioner was reinstated and allowed to continue with his service till the date of his superannuation and accordingly, all retiral benefits are to be calculated on the basis of the last pay drawn as on 31st December, 2021 and the basic pay as on 31st December, 2021 should be taken into account for calculation of pension and other retiral benefits. In view of the changed circumstances, the date of retirement should have been taken as 31st December, 2021 and not on 30th June, 0216.

**10.** Since the report disclosed at page 105 does not show that his performance was unsatisfactory, he could not be denied the benefit of MACP scheme and he shall be given the benefit of MACP scheme from 2008 onwards, as directed by the learned Single Judge. Other directions passed with regard to the compliance of the order including the interest are affirmed. However, the time to pay the differential amount of retiral benefits along with the benefit of MACP scheme is extended by two months from date after taking into consideration 31st December, 2021 as the date of superannuation of the petitioner.

**11.** In view of the above, the appeal is disposed of.

**12.** In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2024 and the same is accordingly disposed of.

**13.** However, there shall be no order as to costs.

**14.** Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Uday Kumar, J.)** **(Soumen Sen, J.)**