

03 & 04
03.10.2024
Ct. No. 11
Jayanta

WP.CT 88 of 2017

Biswa Bhusan Nandi
Vs.
Union of India & Ors.

with

WP.CT 177 of 2017

+

CAN 1 of 2023

Union of India & Ors.

Vs.

Biswa Bhusan Nandi

Ms. Soma Pandey

Mr. Debashis Sinha

Ms. Sharmistha Dhar

Ms. Sonali Gupta Sa

Mr. Rishav Ray

Mr. Chiradeep Sinha

....For the Petitioner in WP.CT 88/2017.

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....For the Respondents in WP.CT 177/2017.

Mr. Anirban Mitra

....For the Respondents in 88/2017.

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....For the Petitioners in WP.CT 177/2017.

1. This case has a chequered history. The petitioner, namely, Biswa Bhusan Nandi (hereinafter referred to as Biswa) in the writ petition being WP.CT. 88 of 2017 (hereinafter referred to as the first WP) after joining the Indian Air Force rendered service for about 15 years. Thereafter, he applied for the post of Data Entry Operator as an Ex-Serviceman pursuant to a notification of the Department of Personnel and Training (in short, DoPT) on 12th February, 1986. He emerged to be successful in the

written test and also cleared the interview, however, he was not granted appointment. Aggrieved thereby, he preferred an original application (in short, OA), being OA 22 of 1997. The said OA was, however, dismissed by an order dated 28th June, 2005. Challenging the same, Biswa preferred a writ petition being WP.CT 215 of 2005, which was disposed of by an order dated 20th June, 2005 setting aside the order impugned and directing the respondents to accommodate Biswa in the post of Data Entry Operator, Gr. B, (DEO) and if for any reason it cannot be made possible, the petitioner may be accommodated in a suitable alternative post.

2. Biswa thereafter filed an application being CAN No. 6744 of 2005 seeking correction of typographical errors and on the date of hearing of the same, on the oral prayer of the respondents in the said writ petition, time towards compliance of the order dated 20th June, 2005 was extended for three months by an order dated 31st August, 2005. Thereafter again the respondents preferred an application being CAN no. 10446 of 2005 seeking further extension of time towards compliance and by an order dated 17th February, 2006 such time was extended till 31st March, 2006. In the midst thereof, the respondent no. 2 and others preferred a Special Leave Petition being SLP (C) no. 5694 of 2006 challenging the order passed in WP.CT. 88 of 2017 but the same upon contested hearing was dismissed with costs assessed at Rs. 50,000/- by an order dated 29th August, 2008.

3. Thereafter, the competent authority *vide* memo dated 27th January, 2009 offered appointment to Biswa. However, he was not granted seniority as per his batch of selection of the year 1994 and his back wages. He was also not included in the Old Pension Scheme applicable to employees appointed prior to the year 2004. As the representations for such benefits were not considered, Biswa preferred an application for appropriate order being CAN 10731 in WP.CT 215 of 2005 but the same was dismissed on 11th September, 2013 with liberty to apply before the Tribunal and accordingly, Biswa preferred OA 590 of 2014. The same was disposed of by an order dated 16th November, 2016. Challenging *inter alia* the inaction towards implementation and denial of fixation benefits, Biswa preferred the first WP. The Union of India and its functionaries also preferred a writ petition being WP.CT 177 of 2017 (hereinafter referred to as the second WP) challenging the order dated 16th November, 2016. The said writ petitions were analogously heard on 10th July, 2018 and the parties were directed to exchange their affidavits. In the second WP, Biswa also filed an application being CAN 1 of 2023 for disbursement of his legitimate and lawful claims.

4. Ms. Soma Panda, learned advocate, assisted by Mr. Sinha, learned advocate appears on behalf of Biswa and submits that the respondents in the first WP have violated the directions of the Hon'ble Court for which Biswa had to approach this Court on repeated occasions.

In the midst thereof, Biswa attained his age of superannuation on 31st March, 2018 and till date, his retirement benefits had been withheld.

5. She argues that it would be explicit from the memo dated 5th June, 2009 and 14th October, 2010 that Biswa had been granted seniority at the bottom of the batch of the year 1995 and that as such he cannot be denied the benefit of notional fixation of pay on and the year of 1995 and the benefits of the Old Pension Scheme which was in force at the said juncture.

6. She contends that in course of hearing before the learned Tribunal, it was submitted on behalf of the respondents in the first WP that Biswa had been granted appropriate seniority along with the 1995 batch and he has also been granted the benefit of notional fixation.

7. She submits that with the sole intent to frustrate Biswa's claim and to heckle and harass him, the Union of India and its functionaries also preferred the second WP and simply kept it pending. Such conduct is most unbecoming of the model employer.

8. Mr. Mitra, learned advocate appearing for the petitioners in the second WP, however, denies and disputes the contention of the respondents and argues that the submission made by the learned advocate does not bind the authorities. The learned Tribunal erroneously recorded that *'it is not denied that the benefit of notional fixation of pay has been granted to the applicant with his batchmates 1995, admittedly i.e. prior*

to the date of commencing of New Pension Scheme from 01.01.2004.'

9. According to him, Biswa was not qualified for the post and he is not even entitled to notional benefits on and from the year 1995 since he was actually appointed *vide* memo dated 27th January, 2009. Such appointment was duly accepted by Biswa without raising any objection whatsoever and as such at this juncture he cannot turn back and claim benefits of appointment from the year 1995.

10. He further argues that the learned Tribunal erred in law directing the authorities to grant the benefits of the Old Pension Scheme in favour of Biswa since the said scheme expired much prior to the issuance of the letter of appointment in the year 2009 and the New Pension Scheme came into effect from 1st January, 2004. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same.

11. Answering our query Ms. Panda, learned advocate appearing for Biswa informs us that Biswa had already retired in the month of November, 2018 and till date the pension payment order has not been issued and the retirement benefits have been arbitrarily withheld by the authorities. Mr. Mitra, however, submits that he has no instruction till date as to whether any retirement benefit has been released in favour of the Biswa.

12. We have heard the learned advocates appearing for the respective parties and considered the materials on record.

13. The argument of Mr. Mitra that the actual submissions of the learned advocate appearing for the authorities were wrongly recorded is not acceptable to this Court since no steps were taken by the authorities before the learned Tribunal contemporaneously.

14. Fairness and reasonableness are paramount issues for administrative action. As a model employer, the State must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole particularly when the claim pertains to retirement benefits. Biswa had contested his claim since the year 2003 and had remained trapped in a purgatorial legal rigmarole, moving back and forth between the High Court and Tribunal.

15. A perusal of the order of the Hon'ble Supreme Court would reveal that on behalf of the petitioners in the second WP assurance was given before the High Court that the order passed by High Court would be complied with and that such promise was absolute and unequivocal in nature and that as such the Hon'ble Supreme Court refused to exercise discretionary jurisdiction under Article 136 of the Constitution of India and did not interfere with the order impugned in the SLP.

16. The said SLP was disposed of on 29th August, 2008 and appointment was issued on 27th January,

2009. Issuing a memo dated 14th October, 2009 the Director himself stated that Biswa may be allotted a seniority at the bottom of the batch (year of examination) on the basis of which candidate just before him has joined. The seniority list published *vide* memo dated 5th June, 2009 clearly indicates that Biswa was granted seniority along with his batchmates from the year 1995 and his name stands incorporated at serial 282 of the seniority list. In the said conspectus, the learned Tribunal held that Biswa was entitled to notional benefits from the year 1995. However, as Biswa did not render actual service on and from 1995 till 27th January, 2009, the learned Tribunal did not grant him back wages and we do not find any infirmity in such direction. The learned Tribunal further observed that as Biswa had been treated to have been appointed along with his batchmates with bottom seniority from the year 1995 and as at that juncture the Old Pension Scheme was in operation, he is entitled to the benefits of the said Old Pension Scheme and the respondents in the second WP were rightly directed to grant the benefits of the Old Pension Scheme to Biswa upon making necessary deduction from his salary, in accordance with law.

17. The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned.

18. In view thereof, the prayer of the petitioners in the second WP for setting aside the order of the learned Tribunal is refused and they are directed to disburse all the retirement benefits to Biswa granting him notional fixation of pay as has been granted to his batchmates of the year 1995 with fixation benefits and to treat him to be a member of the Old Pension Scheme and to grant the benefits of the said Scheme, upon making necessary deduction, in accordance with law, positively within a period of four weeks from the date of communication of this order.

19. With the above observations and directions both the writ petitions and the connected application are disposed of.

20. There shall, however, be no order as to costs.

21. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)