

(2008) 10 JH CK 0024
Jharkhand High Court
Case No: None

Mundrika Prasad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Oct. 22, 2008

Citation: (2009) 2 JCR 324

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal has been filed by the appellant-Mundrika Prasad Singh against the order dated 31.10.2007 passed by the learned Single Judge in W.P.(S) No. 1885 of 2007 by which the writ petition filed by the petitioner, challenging his dismissal from service in the year 1983, was not entertained and consequently the writ petition was dismissed.

2. The admitted case of the parties is that the petitioner-appellant was discharging his duties as Havildar in the Railway Protection Force and was posted under South Eastern Railway Administration in Chakradharpur Division. During the employment, the petitioner-appellant remained absent from duty for a period of ten months for which a proceeding was initiated against him for his unauthorized absence. According to the respondents, notice in regard to the enquiry was duly served on him. However, the appellant-delinquent did not respond to the show cause and hence by virtue of an ex parte enquiry, the charge of unauthorized absence from duty was held to have been established. Consequently an order of his removal from service was passed in the year 1983.

3. The petitioner-appellant challenged the order of his dismissal for the first time in the year 2007 by filing a writ petition, wherein it was contended that the petitioner was suffering from mental depression and was undergoing treatment in Mental Hospital at Kanke-Ranchi. It was also stated that he had preferred an appeal against

the order of his dismissal before the competent authority which was not decided and when No order was passed on his appeal, he finally filed the writ petition before the Single Bench after he recovered from his mental illness.

4. However, the writ petition was dismissed by the learned Single Judge by order dated 31.10.2007 and hence this appeal.

5. We have heard the counsel for the parties and on hearing them it could be gathered that the petitioner-appellant had served for 18 years before the order of his dismissal was passed way back in the year 1983. We have also noticed that the petitioner-appellant became a mental patient after his dismissal from service and perhaps he might have lost his mental balance even before that as he had remained away from service for ten months without any information to the authorities, which gave rise to a departmental proceeding for his removal from service. Insofar as his unauthorized absence from duty is concerned, it could not be established that adjustment of earned leave was considered in any manner except the fact that appellant was affected with some disease and was undergoing treatment and therefore the earned leave that might have accrued in favour of the appellant could have been adjusted towards his leave period and a lighter punishment could have been awarded. But, we have also noticed that the appellant by now has already crossed the age of superannuation, nevertheless he had rendered eighteen years of service prior to removal of service after which he had suffered mental illness.

6. Taking an overall view of the entire facts and circumstances, we are of the view that the appellant's removal from service is fit to be converted into an order of his compulsory retirement on the ground of his mental illness and in that view of the matter, he would be entitled to pensionary benefits which would be calculated and paid in proportion to the services rendered by him for the period of 18 years. We, therefore, direct the respondent competent authority to calculate the pensionary benefits payable to the petitioner-appellant, in accordance with the Rules, and pay him the same from 1st of January, 2009.

7. We make it clear that the claim of arrear of pension will not be allowed to be raised by the appellant as the conversion of the order of removal from service into one of compulsory retirement becomes effective only after we have passed this order of conversion not as a legal right but on the ground of equity and therefore he cannot be held entitled for arrears of pension when the order of his dismissal was still in effect.

8. The appeal, accordingly, is disposed of.