

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 3rd day of August, 2007.

HON'BLE MR. JUSTICE KHEM KARAN, VICE-CHAIRMAN.

ORIGINAL APPLICATION NO. 1416 OF 2004

Kamla Prasad, S/o Shiv Dhari Yadav, a/a 70 years,
R/o Vill. Vihiyapur, Post- Suriyawa, Distt. Sant Ravidas Nagar,
Bhadohi.

.....Applicant.

1. Union of India through Secretary, **V E R S U S**
Ministry of Commerce and Textiles,
Govt. of India, New Delhi.
2. The director (Handicraft), Office of Development Commissioner
(Handicraft), Central Region, Kendriya Bhawan, 7th Floor,
Aliganj, Sector-H, Lucknow- 226024.
3. Senior Accounts Officer, Central Pension Accounts Office,
Trikoort-II Complex, Bhikaji Cama Place, New Delhi- 110066 .

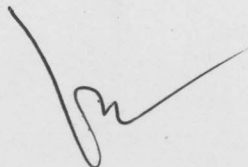
.....Respondents

Present for the Applicant: Sri O.P. GUPTA
Present for the Respondents : Sri P.C. SHUKLA

ORDER

Applicant Kamla Prasad, who superannuated on 29.02.1992, from the service of the respondents, has filed this O.A under section 19 of Administrative Tribunals Act, 1985 for the following relief(s) :-

- (a). to quash the order dated 21.05.2004 (Annexure- 1), by which the respondents refused to give him pension;

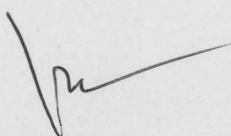


(b). to direct the respondents to pay him pension w.e.f. 01.03.1992, amount of leave encashment, group insurance and commuted value of pension etc;

(c). to direct the respondents to pay arrears of pension w.e.f. 01.03.1992 together with interest at market rate.

2. The applicant alleges that he was selected and appointed as Assistant Craftsman on 05.11.1979 and was subsequently regularized w.e.f. 03.10.1985 and after serving for more than 12 years, retired on 29.02.1992. He says that he was entitled to pension, as he put in ^{more} ~~20~~ 4 than 12 years in service, but was not given so, he filed one O.A No. 34/2004, which this Tribunal disposed of vide order dated 21.01.2004 (Annexure- 3) directing the respondents to decide his claim. In compliance of these directions, the respondent No. 2 has passed the impugned order dated 21.05.2004 (Annexure- 1) rejecting the claim for pension. The main ground for rejecting the claim for pension is that since the services of the applicant from 05.11.1979 to 02.10.1985, were on daily wages basis and he was paid from contingency so in view of Rule 14 GID (2) only 50% of this period is to be counted for qualifying service and it comes to 2 years 11 months and 14 days only and on adding the same to the period of 6 years 4 months and 27 days after regularization, total comes to 9 years 3 months and 26 days, which is short of minimum 10 years. As regards DCRG, GPF, CGEIS etc, it is stated that the same has already been paid.

3. I have heard the parties counsel and have gone through the entire material on record. There is no dispute between the parties that under



the relevant Pension Rules , a Govt. servant retiring from Govt. service, becomes entitle to pension, only if he has put in minimum 10 years qualifying service. In other words, one, who has not put in minimum 10 years qualifying service, will not be entitled to pension. The respondents do not dispute that service rendered after the regularization is to be counted as qualifying service, and in the case of the applicant this period comes to 6 years 4 months and 27 days. According to them, only 50% of the period from 05.11.1979 to the date of regularization i.e. 03.10.1985, is to be treated as qualifying service, in view of Rule 14 of the Pension Rules, as in that period, applicants services were not regular and he was paid from contingency and in this way even after adding that 50% period, the applicant's qualifying service falls short of 10 years, by about 8 months.

4. Sri O.P. Gupta has argued that firstly the services of the applicant from 05.11.1979 to 03.10.1985, ought to have been treated as regular, as the applicant was directly selected and posted in class III and secondly , even it the same were treated on daily wages basis or adhoc basis, regularization should have been effected from the date of initial appointment i.e. from 05.11.1979. His third submission is that in view of recent judicial pronouncements, period prior to regularization, could be taken in to consideration for granting minimum pension. He has referred to a Division Bench decision of Punjab and Haryana High Court in Hari Chand Vs. Bhakra Beas Management Board and Others (ATJ) 2005(2) pg. 30, the learned counsel for the respondents has argued otherwise.

5. After going through the pleadings and the appointment letter dated 05.11.1979 (A- 5), I find no substance in the argument that initial



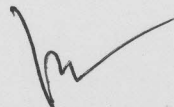
appointment dated 05.11.1979 was regular or substantive one. It is stated in appointment letter dated 05.11.1979 that he shall be treated as casual worker. It is stated by the respondents in para 3(a) of reply that there was no post of Assistant Craftsman in 1979. If there was no post, the question of appointment dated 05.11.1979 being regular one did not arise. Moreover, according to the respondents, in O.A No. 545/1986 filed by Master Craftsman and Assistant Craftsman, the Tribunal issued direction on 09.08.1988 for regularizing the services of such daily wagers from a date, just one year before the filing of that O.A, which was upheld by the Apex Court. They say in para 3 (b) that after rejection of SLP, the applicants of that O.A filed Review Petition No. 40/1988 but the same was also rejected by the Tribunal on 01.11.1989. They go on to state that with a view to comply with the above directions of Tribunal, posts were created w.e.f. 03.10.1985 and rules were framed in 1990. In view of all this, it is difficult to accept the argument of Sri Gupta that appointment dated 05.11.1979 was regular or substantive. Moreover, once the applicant accepted his regularization w.e.f. 03.10.1985, he cannot be permitted to argue that his appointment dated 05.11.179 was regular one. During the course of arguments, Sri Gupta tried to say that applicant was casual worker and not casual labour, and was in group 'C'. I was not able to appreciate this part of his argument in the context of the question as to whether appointment dated 05.11.1979 was regular or adhoc or daily wages basis.

6. Relying on Ramji Lal and others Vs. NIH, FW and others reported in 2002 v AD (Delhi) page 892 and Supreme Court decision in Direct Recruitment Class-II Engineers Association 1990 (2) SC Pg. 900, Sri Gupta has contended that regularization should have been made

effective from initial date of appointment. I am of the view that the submission is not acceptable one. The facts in both the above cases were different, in the sense that in the case in hand, regularization has been effected from the date given in order dated 09.08.1988 passed in O.A No. 545 of 1986. The argument that applicant was not party in that O.A, will make no difference, once he accepted that position.

7. Last submission of Sri Gupta is that the period from 05.11.1979 to 03.10.1985 can also be counted as qualifying service in view of the decision in Hari Chand's case (Supra). The plea requires deeper examination. After noticing various decisions, including Mohan Singh Vs. State of Haryana 1991 (3), Service Cases Today 147, Joginder Singh Vs. State of Haryana and others 1998 (2)ILR page 73 (P&H), Kesar Chand Vs. State of Punjab 1998(2) PLR 223 (pg. 13), the High Court of Punjab and Haryana directed the respondents to count services, rendered as daily wager towards qualifying service and sanction pension. Rule 3.17.A of Punjab Civil Service Rules (similar to Rule 14 of the pension rules here), providing for counting only half of such period, was found to be without any logic. The learned counsel for the respondents has not been able to cite any authoritative decision taking a contrary view.

8. In a recent decision dated 13.07.2007 rendered by me in O.A No. 224/2002 Bhondu Vs. Union of India and others, I have taken a view that if minimum required 10 years qualifying service, falls short by few months, the same could be made up from the period spent as casual labour with temporary status, so as to provide at least minimum pension to the employee, who served the government for considerable period. The said view was taken after noticing decision of Gujrat High Court in



Rukhiben Ruphbhai Vs. UOI, ATJ 2006(2) page- 1 and also decision dated 20.04.2005 of this Tribunal in O.A No. 748/2004 Amardeo Vs. UOI I see no reason not to rely on the said decision, so as to maintain consistency.

9. In view of what has been said above, impugned letter dated 21.05.2004 (A-4) is quashed and the respondents are directed to grant minimum pension to the applicant from due date, as if he rendered 10 years qualifying service, by making up the short fall, from periods from 05.11.1979 to 02.10.1985. This shall be done within a period of three months from the date, a certified copy of this order is produced before them, failing which, they shall be liable to pay interest @ 12% per annum from the expiry of said period of three months.

✓
1 June
03.8.07

No order as to costs.

(KHEM KARAN)
VICE-CHAIRMAN

/Anand/