

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 13TH day of FEBRUARY 2007

Original Application No. 1622 of 2004

Hon'ble Mr. P.K. Chatterji, Member (A)

Jagannath Yadav, S/o late Chanika Yadav through his legal representative Smt. Rampatti Devi (Wife), R/o Vill Mardanpur, Post Nai Bazar, Distt: Sant Ravidas Nagar (Bhadohi).

. . . . Applicant

By Adv: Sri L.K. Dwivedi

V E R S U S

1. Union of India thorough Secretary Textile, New Delhi.
2. Development Commissioner (Handicraft), West Block No. 7, R.K. Puram, New Delhi.
3. Regional Director (Central Region), Office of the Development Commissioner (Handicraft) B-46 (j.) Part Mahanagar Extension, Lucknow.

. . . . Respondents

By Adv: Sri R.K. Tiwari

O R D E R

The dispute involved in this OA is whether the applicant's service as Casual Labour w.e.f. 21.03.1978 to 23.03.1981 should be considered for the purpose of deciding his eligibility for pension. The matter was considered by the Tribunal earlier in OA No. 977/02 (Annexure A-15). The relevant portion of the judgment is as follows:

".....Therefore, the interest of justice would be met if this case is remitted back to the authority with a clear direction to inquire and verify from the Carpet Weaving Training Centre, where the applicant had stated to have worked. After making

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proper verification if it is proved that the applicant had indeed worked during this period with the centers, as alleged by the applicant, the shall pass a reasoned and speaking order by taking 50% of the period from 21.03.1978 to 23.03.1981 as well and then decide his case for pensionary benefits. In that case, if applicant is to be permitted the pensionary benefits, it would be open to the respondents to adjust the amount, which has already been paid to the applicant, which according to the respondents would not be payable to the applicant namely the service gratuity."

2. Thereafter, the matter was reconsidered by the respondents, which resulted in the issue of the order dated 31.08.2004 (Annexure A-1). It is this order which has been challenged by the applicant. The grounds on which it has been challenged are:

The Tribunal in its direction dated 14.11.2002 passed in OA No. 997/02 clearly directed the respondents to verify the authenticity of the claim of the applicant that he had worked in Carpet Waiving Training Centre during this said period. The Tribunal further directed that if it was proved that the applicant had indeed worked during the period then half of this period should be taken into account for considering his eligibility for pension and thereafter the respondents could issue a reasoned and speaking order.

3. On perusal of the order dated 31.08.2004 indicates that it is silent with regard to the period from 21.03.1978 to 23.03.1981, which the Tribunal had particularly wanted to be verified. It

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is true that the respondents have explained how the eligibility for pension was considered with regard to the period from 24.03.1981 to 30.09.1992 i.e. the date of retirement, it does not give~~s~~ any satisfactory explanation regarding the period under dispute i.e. 21.03.1978 to 23.03.1981.

4. The applicant in the OA has stated categorically that he had worked as casual labour during the said period. He has also attached a copy of his first engagement as casual labour dated 21.03.1978. He has also attached a copy of order dated 11.02.1981 whereby he was appointed as Master Craftsman on the ~~basis~~ ^{basis} pay of Rs. 500/-. I have gone through the reply of these points mentioned in the OA. I found that ^{these} have not been contradicted. The respondents thus acknowledged that the applicant was engaged as casual labour on 21.03.1978 and he worked as a casual labour till he was appointed as Master Craftsman. The reasons which have been given for not treating this period for eligibility for pension, ^{in the case} however, are that the applicant was not on continuous service. The respondents have not furnished any copy of such ruling which stipulates that for the purpose of pension 50% of that period as casual labour would be counted which is spent in unbroken spells of duty.

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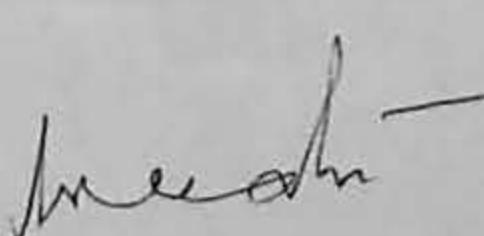
5. The respondents have also not explained as to how this period spent as casual labour would not be recognized for the purpose of pension ~~as well as~~ the period from 24.03.1981 to 01.10.1985 which is also stated to be spent as casual employee could be counted for pension. Therefore, it would be clear that the order dated 31.08.2004 does not answer all the points mentioned in the direction of the Tribunal in OA 977/02.

6. Respondents' counsel drew my notice to the averments made in the counter affidavit, wherein it is stated that the respondent could not ~~be~~ given to the applicant the benefit of the service from 21.03.1978 to 23.03.1981 for the reasons that he was not in continuous duty. However, he could not offer any satisfactory explanation as to why no explanation was offered in the disposal dated 31.04.2004 of the representation of the applicant when the Tribunal had directed the respondents specifically to look into this period. I am of the view that the validity and legality of this order is to be seen within the context of the order itself and an attempt to validate the same by subsequent clarification/submission is not acceptable under law.

7. For the above mentioned reasons I am of the view that the order dated 31.08.2004 (Impugned

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order) suffers from infirmity and, therefore, deserves to be quashed. The impugned order is, therefore, quashed. The respondents have to examine and consider the matter afresh particularly regarding the claim for the period 21.03.1978 to 23.03.1981. They have also to explain in terms of the rules. The question which they obviously have to answer is if 50% of the period from 24.03.1981 to 02.10.1985 which is spent as casual employee, could be counted for pension then why not the period from 21.03.1978 to 23.03.1981 which is also spent as casual labour, which may or may not be continuous. The decision of the respondents will not be complete and valid without reference to such legal aspects. Therefore, after setting aside the order dated 31.08.2004 I hereby direct that the matter should be considered by the respondents afresh in the light of ^{points-} all the ~~averments~~ observed and, thereafter, the respondents should take a proper decision as admissible under rules. The decision should be conveyed to the applicant by a reasoned and speaking order within a period of three months from the date of receipt of copy of this order. No cost.



Member (A)

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