

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.977 of 2002

Allahabad this the 14th day of November, 2003

Hon'ble Mrs. Meera Chhibber, Member(J)

Sh. Jagannath Yadav, Son of Late Chanika Yadav,
Resident of Village Mardanpur, Post Nai Bazar,
District Sant Ravidas Nagar (Bhadohi).

Applicant

By Advocate Shri L.K. Dwivedi

Versus

1. Union of India through Secretary, Textile, New Delhi.
2. Development Commissioner (Handicraft), West Block No.7, R.K. Puram, New Delhi.
3. Regional Director (CR), Office of the Development Commissioner (Handicraft) B-46 (J. Park) Mahanagar Extension, Lucknow.

Respondents

By Advocate Shri M.C. Tripathi

O R D E R (Oral)

By this O.A., the applicant has sought the following relief:-

"i. That the applicant prays to the Hon'ble Court to direct the respondents to provide pension to the applicant from 1.11.1992 onwards with interest including revised pay scale of 4th and 5th Pay Commission and arrears from 1.11.1992 onwards including the payment made in pursuance to the letter dated 27.2.2002.

ii. Issue any other application, order or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances

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of the case.

iii. Award cost of the application to the applicant."

2. It is submitted by the applicant that he was selected and appointed as Assistant Craftsman vide letter dated 21.03.78 on a consolidated monthly wages of Rs.400/- per month(annexure A-1). He joined and posted as Assistant Craftsman at Carpet Weaving Training-cum-Service Centre at Phaphamau, Allahabad where he worked till March, 1980. In the April, 1980, the applicant was transferred to Jalapur Centre of District Varanasi where he worked as Assistant Craftsman till January, 1981. During this period, he was also attached for some time to Sewapuri Centre and for some time at Jalapur Centre. Thereafter, he was shifted to Jolhupur Centre at Varanasi. All this while, applicant was paid his salary.

3. In February, 1981, the applicant was promoted to the post of Master Craftsman in the consolidated salary of Rs.500/-.Vide order dated 11.02.1991 the applicant was transferred from Jolhupur to Khaga in District Fatehpur(annexure-2). There also he worked from February, 1981 to February, 1982 and was paid his wages. Thereafter, he was transferred from Khaga to Jigyasupur,Carpet Weaving Centre, District Raibareilly, where he worked till 1986 and vide order dated 24.04.90 on creation of vacancy he was regularised w.e.f. 03.10.85 wherein applicant's name find place at serial no.112 (annexure A-3). He was also granted the pay scale of Rs.1200-2040 w.e.f. 01.01.1986. Ultimately vide notice dated 01/03-10-92, the applicant was retired



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w.e.f. 31.10.1992 (page 36). After retirement, he again moved a representation for grant of pension and other retiral benefits, which was forwarded on 12.06.1993 (page 38). After a long correspondence the Regional Director granted sanctioned for payment of Rs.1986/- vide his order dated 31.10.2001 under C.G.E.I.S. and vide order dated 01.03.02 the applicant was allowed to be paid service gratuity and D.C.R.G. (page 50). These payments were made to him on 20.05.02 (page 52) by deducting an amount of Rs.2645/- i.e. one month salary because he was wrongly retired w.e.f. 31.10.92 even though it should have been 30.09.02.

4. The grievance of the applicant in this case is that as per Govt. of India's decision, the respondents ought to have counted his 50% period from 21.03.78 to 23.03.81 as well, whereas the respondents have counted only half period from 24.03.1981 to 02.10.1985 apart from his regular service from 03.10.1985. In support of his contention counsel for the applicant has relied on Govt. of India's decision annexed at page 54 of the O.A., which for ready reference reads as under:-

Para-2 Counting half of the service paid from contingencies with regular service:- Under Article 368 of the CSRs (Rule 14) period of service paid from contingencies do not count as qualifying service for pension. In some cases, employees paid from contingencies are employed in types of work requiring services of whole time workers and are paid on monthly rates of pay or daily rates computed and paid on monthly basis and on being found fit brought on to regular establishment. The question whether in such cases service paid from contingencies should be allowed to count for pension and if so, ... pg. 4/

to what extent has been considered in the National Council and in pursuance of the recommendation of the Council, it has been decided that half the service paid from contingencies will be allowed to count towards pension at the time of absorption in regular employment subject to the following conditions, viz.:-

- (a)
- (b)
- (c) The service should have been one for which the payment is made either on monthly or daily rates computed and paid on a monthly basis and which though not analogous to the regular scale of pay should bear some relation in the matter of pay to those being paid for similar jobs being performed by staffs in regular establishments.
- (d) The service paid from contingencies should have been continuous and followed by absorption in regular employment without a break.
- (e)"

5. He has also referred to the letter dated 13.10.1998 on page 46 whereby the Assistant Director had inquired from Shri R.K. Bhalla to verify and inform whether the applicant had worked during the period from May 1980 to January, 1981 as in the old records, documents to the said period are not available. This information was required to decide the pension of the applicant. It is submitted by the applicant's counsel that it seems for non-availability of the documents, the respondents have not pursued the case of the applicant any further even though he had very much worked at various Weaving Training Centres, as mentioned by him in the O.A. He has, thus, submitted that if the period of 21.03.78 to 23.03.81 is taken into consideration and half of this period is also added in the qualifying service, he would become entitled to pension as his service would be more than 10 years.



6. The respondents on the other hand have submitted that the applicant did not work continuously during the period, as mentioned in the O.A. They have submitted that the applicant was engaged afresh on the post of Master Craftsman on 01/11-02-1981 as casual worker on consolidated monthly wage basis at the rate of Rs.500/- per month and posted in Carpet Weaving ^{since} Training Centre, Khaga, Distt. Fatehpur and there was a break in his service, the said period cannot be counted for the purpose of granting pension to the applicant. They have also submitted that due to technical oversight the applicant was treated to be retired on 31.10.1992 whereas he was to retire on 30.09.02, since his date of birth was 01.10.1934, therefore, he was not entitled to count the period for giving retiral benefits as per rules. They have further clarified the position that the applicant was engaged w.e.f. 21.04.78 to 31.05.80 and 01.11.80 to 28.02.81, as such, it cannot be said that the applicant had worked continuously. They have further explained that the period from 24.03.1981 to 02.10.1985 comes out four years six months and 10 days as contingent service and half of the above period comes to 2 years 3 months and 5 days, whereas his regular service from 03.10.85 to 30.09.92 comes to the total period of qualifying service is 9 years 3 months and 3 days. Therefore, since he had not completed 10 years, he is not entitled for the pensionary benefits. As far as applicant's G.P.F. is concerned, the respondents have submitted that there were some objection by Central Pay and Accounts Office, therefore, after removing the objection, the bill has again been sent for early payment to the

applicant. He has, however, been granted gratuity of Rs.17020/- and D.C.R.G.Rs.6555/- through D.D.No.050028 dated 21.04.2002. They have further explained that service gratuity is paid only to those employees who are not eligible for pensionary benefits. Since the applicant has already been paid the service gratuity, he would not be entitled to the pensionary benefits. They have, thus, submitted that the O.A. is devoid of merit, as such, it may be dismissed. In support of their contentions, the respondents have annexed Rule 35 which for ready reference reads as under;

"Rule 35 Superannuation Pension

A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement."

7. The applicant has reiterated the facts as mentioned in the O.A. in his rejoinder.

8. Heard both the counsel and perused the pleadings as well.

9. It is seen that the applicant has categorically mentioned the stations and the Carpet Weaving Centre where he had worked for the period from May, 1980 to January, 1981. He has also submitted that he has paid wages and salary for the said period but the respondents have simply denied it but there is no substantive documents available on record to show whether the applicant had indeed worked in the Carpet Weaving Training Centre, as mentioned by him or not. Perusal of the letter dated 13.10.1998(page 46) shows that the Assistant Director did make a request from Shri R.K. Bhalla, which has been referred to by the



applicant in para-4.16 of the O.A. but, the respondents in the reply have neither disputed this letter nor have ~~said~~ ^{stated} that what reply has been received by them from the Office of Shri R.K. Bhalla. It is also said in that letter that in the old records, documents for the above said period are not available. If the records were not traceable or available in the Office of the respondents, the proper course would have been to make inquiries from those Carpet Weaving Training Centre where the applicant has stated to have worked during the period from May, 1980 to January, 1981, as stated by him in the O.A. specifically. The respondents have not shown that any effort was made in this regard to make inquiries from the said centres. If applicant had indeed worked during this period, he would have been entitled to account the entire period from 1978 to 23.03.1981 (50% of the said period for taking his qualifying service) and it ~~is~~ ^{would be} definitely be more than 10 years, if that period ~~has been~~ ^{was to be} added in his existing qualifying service, as mentioned by the respondents themselves. This is one aspect which I cannot decide sitting here in the Court as it will have to be decided on the basis of correspondence made with the above said Carpet Weaving Training Centres to verify the fact, as stated by the applicant. 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 has stated ~~to be~~ ^{to have} worked. After making proper verification if it is proved that the applicant had indeed worked during this period with the centres, as alleged by the applicant, the

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respondents 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.

10. As far as date of superannuation is concerned, since the Rule 35 is very clear the applicant would be deemed to have retired on 30th September, 1992. In case on verification, the respondents come to the conclusion that the applicant had not worked during the period, as mentioned above in the centres as mentioned by him, they (respondents no.2 and 3) shall pass a reasoned and speaking order explaining those facts to the applicant also. This exercise shall be completed within a period of four months. With the above direction, this O.A. is disposed off. No order as to costs.



Member (J)

|M.M. |