

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1297 of 2006

Allahabad this the 1st day of June, 2012

Hon'ble Mr. Shashi Prakash, Member-A

Abdullah Khan, son of Late Sri Rahman Khan, R/o Mohalla - Rajdepur,
Colony, District - Ghazipur.

Applicant

By Advocate: Mr. A.K. Malviya

Vs.

1. Union of Public Service Commission, through its Secretary,
U.P.S.C. Building, Shahjahan Road, New Delhi.
2. The Chief Controller, Government Opium Alkaloid Factory, 80-81,
Morar, Gwalior.
3. General Manager, Government Opium Alkaloid Work, Ghazipur.
4. The Manager, Government Opium Alkaloid Work, Ghazipur.

Respondents

By Advocate: Mr. S.M. Mishra

ORDER

By means of the present O.A., applicant has prayed for the
following relief (s): -

{A} Your Lordship may kindly be pleased to quash the
impugned order dated 22.2.2005 passed by the respondent No. 3
i.e. General Manager, Government Opium Alkaloid Work,
Ghazipur.

{B} Your Lordship may also kindly be pleased to direct the
respondents to provide the pension alongwith 18% interest per
annum to the applicant as earlier as possible, to meet the ends of
justice.

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{C} Any other relief or direction as deem fit under the circumstances may also kindly be granted in favour of the applicant and against the respondents.

{D} Any costs of this application may also be granted."

2. The facts of the case, in brief, are that the applicant while working as Electrician in the Department of Opium Alkaloid Work, Ghazipur was served on 09.09.1977 with an order of penalty of compulsory retirement. The applicant, aggrieved against the order of punishment, filed an Appeal which was rejected by order dated 08.02.1980, and the Revision filed against the order of appeal also had the same fate and rejected by order dated 30.08.1988/ 06.09.1988. The applicant claimed that in the order of punishment dated 09.09.1977, it was observed by the Disciplinary Authority that *"the period of suspension undergone by him shall be treated as on duty for purpose of pension only and he shall be entitled to the same wages as he would have received had he not been placed under suspension after reducing the subsistence allowance, if any, paid to him during the period of suspension"*. Hence, he is entitled for pension. However, aggrieved against the aforesaid orders of penalty, the applicant filed an O.A. No. 900 of 1996. This Tribunal by an Order dated 03.04.2001 directed the respondents to grant pensionary benefits to the applicant within a period of three months. It was further directed that if the applicant has not been paid his pensionary benefits till date, he shall be paid interest @ 10% from the date of filing of the O.A. As the respondents have not complied with the Order within the stipulated period, the applicant filed a Contempt Petition No. 115 of 2002, which was rejected vide order dated

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7.11.2002. Aggrieved by the non-compliance of the Order, the applicant filed an application to recall the order dated 27.11.2000 which was rejected by this Tribunal. Thereafter, applicant again filed a Contempt Petition No. 191 of 2003 and this Contempt Petition too was rejected with observation that the applicant made a representation. Thereafter, applicant has been continuously making representations. In reply of the representation dated 02.02.2005 the respondents informed the applicant that the matter has already been closed and as the applicant has not completed requisite number of days, he is not entitled for pension. The applicant in the present O.A. has challenged the order dated 22.02.2005.

After getting the notices, the respondents have contested the case and filed the Counter Affidavit. In the Counter-Affidavit respondents have submitted that the applicant was involved in an activity of taking out the Morphine outside the respondents' treatment. The respondents gave him show cause notice, and applicant preferred his defence. Thereafter, the Disciplinary Authority came to the conclusion that the charges leveled against applicant stood established and he found not fit to be retained in service and imposed the penalty of compulsory retirement on 09.09.1977. The Appeal as well as Revision preferred by applicant was rejected. With regard to the decision in O.A. No. 10 of 1996, the respondents submitted that the applicant is not entitled for pension as he has not completed the requisite qualifying service of 10 years, and he has completed only 9 years and 10 days' service including suspension period. The

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respondents further submitted that as per Rule 49 (2) (b) of CCS (Pension) Rules, 10 years qualifying service is necessary for pension purpose. The respondents submitted that the order of this Tribunal has been complied with as the payment towards pensionary benefits like retirement gratuity etc. has already been released to the applicant. The respondents have prayed for dismissal of the O.A. as the applicant is not entitled for any relief.

4. Shri A.K. Malwiya, learned counsel for the applicant argued that although the applicant had completed 14 years of service i.e. from 1963 to 1977, he has wrongfully denied the benefit of pension on the ground that he has completed only 09 years 10 months and 10 days of service instead of required 10 years of qualifying service as envisaged under Rule 49 (2) (b) of CCS (Pension) Rules. He drew my attention to the Order passed by this Tribunal in O.A. No. 900 of 1996 by which the direction dated 03.04.2001, directing the respondents to grant pensionary benefits to the applicant within a period of three months, was given. Since the respondents do not clarify with the aforesaid Order of the Tribunal, the applicant had filed two sets of the Contempt Petition, last being numbered as C.P. 191 of 2003 which was disposed of with the observation that the applicant may file a representation with regard to his Claim before the answering respondents. As the representation submitted by the applicant was rejected by the respondents on the ground that the applicant had not completed 10 years of service hence he was not eligible for pensionary benefits. Learned counsel further stated that in the representation submitted by the applicant he

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mentioned that the basis on which the calculation was made regarding the period of qualifying service had not been clearly enunciated, and that the respondents have not taken into account the provisions of Rule 49 (3) of CCS (Pension) Rules, application of which would make the qualifying service of the applicant as being more than 10 years and, therefore, eligible for the benefit of pension. Having regard to the above submissions, learned counsel for the applicant strongly urged that the directions should be given to the respondents for considering the extension of pensionary benefits to the applicant.

5. In his counter arguments, Counsel for the respondents Shri Shesh Mani Mishra submitted that as per the order dated 03.04.2001 passed in O.A. No. 900 of 1996, the payments towards pensionary benefits i.e. retirement gratuity etc. have already been released in favour of the applicant but since he did not possess the required qualifying service of 10 years, as required under Rule 49 (2) (b), his case for pensionary benefit could not be considered. Shri Mishra submitted that the applicant has qualifying service of nine years, 10 months and 10 day including the suspension period. In view of the aforesaid facts Counsel argued that the claim of applicant for extension of pensionary benefits is not sustainable and, therefore, liable to be rejected.

6. Heard Shri A.K. Malviya, Counsel for the applicant and Shri S.M. Mishra, Counsel for the respondents and perused the pleadings on record.

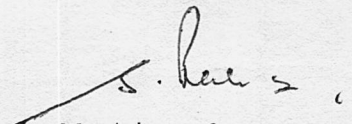
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7. The limited question to be decided in this O.A. is whether the applicant has completed the required qualifying years of services, as prescribed under Rule 49 (2) (b) of CCS (Pension) Rules. The Rules provide that an employee shall be eligible for pension after qualifying service of 10 years. In the instant case, the respondents have denied the benefit of that provision on the ground that since he has only qualifying service of nine years, ten months and ten days, he is not entitled for pensionary benefits. In the impugned order, which is the rejection order of representation of the applicant, the respondents have addressed the issues raised by the applicant in his representation relating to applicability of Rule 49 (3) of CCS (Pension) Rules in the case of applicant. The respondents have indicated that the Rule 49 (3), quoted by the applicant, is taken from the Seventh Edition of Swamy's Compilation of CCS (Pension) Rules, which has been substituted by the Government of India, Department of Personnel by notification dated 26.08.1983. Hence, the application of modified/ amended provisions of Rule 49 (3) of CCS (Pension) Rules, which is currently in operation, cannot be applied in his case as it can have applicability in cases of person superannuating after 26.08.1983. In his case, the provisions of Rule 49 (3), as it stood prior to amendments of 1983, shall be applicable. As under the provisions of Rule 49 (3), applicable in 1997 i.e. at the time of compulsory retirement of the applicant, as brought out by the respondents, do not contain any provisions for treating fraction of a year equal to 3 months above as completed one $\frac{1}{2}$ years and to be reckoned as qualifying service, the applicant cannot claim the benefit of modified provisions. Having regard to the foregoing

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facts, it is evident that in absence of the applicability of the modified provisions of Rule 49 (3) of CCS (Pension) Rules as modified on 26.08.1983, the applicant has completed only 9 years, 10 months and 10 days of qualifying service and, therefore, does not fulfill the requirement of completing 10 years of qualifying service to become eligible for benefit of pension under the Rules.

8. Having regard to the aforesaid position, I do not find any merit in the O.A. which is accordingly dismissed. No order as to cost.


Member-A

/M.M/