

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 408 of 2006

_____ this the 3 day of 7 2009

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

SURENDRA PAL VERMA, S/o Late Laxmi Prasad R/o
1/160, Nawabganj, Kanpur.

Applicant

By Advocate: Sri Ashish Srivastava

Vs.

1. Union of India through Secretary, Ministry of Health & Welfare, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances & Pension Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhawan, New Delhi.
3. Director General, Directorate of Medical Services, Nirman Bhawan, New Delhi.

Respondents

By Advocate: Sri Saurabh Srivastava

ORDER

By A.K. Gaur, Member (J)

By means of aforesaid O.A., the applicant has claimed
the following relief (s): -

- "i. This Hon'ble Court may graciously be pleased to quash the impugned order dated 09.03.2004 passed by the respondent No. 3 (Annexure no. 14 with compilation No. I to the original application);*
- ii. this Hon'ble Court may graciously be pleased to direct the respondent no. 3 to count past services rendered by the applicant for all purposes and accordingly the*

pension of the applicant may be fixed and Gratuity may be paid taking into account of his past service and the payment may be made alongwith arrears with interest of 18% per annum."

2. Perusal of the Original Application clearly indicates that the applicant has impleaded only three respondents, whereas in the body of Original Application applicant has referred respondent No. 5, 6, 7 and 8 without indicating their designation and addresses. Moreover they have not been impleaded as one of the respondents in the array of parties.

3. The brief facts of the case of the applicant are that the applicant was recruited as Sepoy Nursing Assistant in the Army Medical Corps (Defence service), and he was discharged from Army Medical Corps due to Neurotic Depressive Reaction w.e.f. 05.01.1965. The date of enrollment of the applicant is 28.10.1960, and date of discharge is 04.01.1965. In this regard, Identity Card was also issued to the applicant, showing the date of enrollment and date of discharge (Photostat copy of extract of Identity Card has been filed as annexure A-1/Compilation No. II). After discharge from Military service, the applicant applied for disability pension but his request was not acceded to, however, the gratuity amounting to Rs.304.50 was released. While issuing the discharge certificate, the

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applicant was also declared fit for light civilian employment. Being an ex service man the applicant applied for employment as Compounder in the Office of Chief Medical Officer, Nagar Mahapalika, Kanpur. The applicant was called for interview vide letter dated 09.02.1965 (annexure-2). The applicant was, however, appointed as a Compounder in the Office of Chief Medical Officer, Nagar Mahapalika, Kanpur on 09.03.1965 against the leave vacancy and thereafter applicant also worked against the regular vacancy. The applicant in order to have a better prospect in his service career also submitted an application to the Railway Service Commission, Allahabad on 09.10.1966 for recruitment as a Pharmacist. The applicant was finally selected by Railway Service Commission, Allahabad as a Pharmacist and vide letter dated 27.12.1966 the applicant was intimated in this regard. The applicant reported for duty on 17.10.1967 in the afternoon. Vide letter dated 17.10.1967, the Divisional Railway Manager, Northern Railway, Moradabad also issued a letter that the applicant has reported for duty on 17.10.1967 in the afternoon (Photostat copy of letter dated 17.10.1967 has been filed as annexure A-4 to the O.A./ Compilation II). On 19.12.1968, the applicant submitted his resignation, which was accepted and the applicant was relieved with immediate effect, a copy of relieving letter and

acceptance of resignation dated 19.12.1968 has been filed as annexure A-5/Compilation No. II to the O.A. The applicant further applied for appointment as a Pharmacist against the advertisement issued by Medical In charge, Employees State Insurance Dispensary, Kanpur, and was selected for the aforesaid post. The applicant continued with this assignment as Trained Pharmacist and continued to work up to 21.06.1976. While the applicant was working as a Pharmacist under the Employees State Insurance Dispensary, Nawabganj, Kanpur, he further applied in pursuance to advertisement published for recruitment of Pharmacist in the pay scale of Rs.330-560/- through proper channel. This vacancy was advertised by the Central Government Health Scheme (Department of Central Government), Pandu Nagar, Kanpur. The applicant was selected and appointed on the said post through appointment letter dated 01.05.1976 but since he was not relieved from earlier employer, he joined the post on 21.06.1976. After being appointed as Pharmacist Grade I, the applicant continued and retired, after attaining the age of superannuation, from Central Government Health Scheme from the post of Senior Pharmacist on 31.07.2000. The applicant has placed reliance on the Rule 13 and 19 of CCS (Pension) Rules, 1972 in order to submit that his past services be counted for grant of pensionary benefits. He

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has filed several representations in this regard, Photostat copy of letter dated 07.02.1986 has been filed as annexure A-9/Compilation No. II to the O.A. Vide letter dated 02/04-01-1988 the request of the applicant was forwarded to the Deputy Director (Administration) [CGHS-II], Nirman Bhavan, New Delhi for necessary action. The applicant also preferred representation dated 18.12.1991 and thereafter has been sending continuous representation^e one after another. The applicant ultimately filed O.A. No. 03 of 2002, which was finally disposed of by this Tribunal on 08.11.2003, directing the Director General, Directorate Medical Service, Nirman Bhavan, New Delhi to consider and decide the representation of the applicant dated 03.08.2001 by a reasoned and speaking order in accordance with Rules within a period of three months. The Director Administration (CGHS), Directorate General of Health Services, CGHS Division, Nirman Bhavan, New Delhi vide letter dated 09.03.2004 passed a detailed order on the representation of the applicant, and rejected the same, Photostat copy of the order dated 09.03.2004 has been filed as annexure A-14/Compilation No. I to the O.A. Aggrieved with the aforesaid Order dated 09.03.2004, the applicant has filed the present O.A.

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4. In the Counter Affidavit, filed by the respondents, they submitted that the applicant had worked in Employees State Insurance Dispensary, Kanpur during 01.03.1969 to 21.06.1976, and thereafter he joined Central Government Health Scheme, Kanpur on 22.06.1976. While working as Senior Phamaist under the Central Government Health Scheme the applicant retired on 31.07.2000. The applicant filed O.A. 03 of 2003 before this Tribunal for direction to the respondents to count his previous service rendered in Defence department w.e.f. 28.10.1960 to 04.01.1965, in Nagar Maha Palika, Kanpur w.e.f. 21.07.1965 to 16.10.1967, and in Railway department w.e.f. 18.10.1967 to 19.10.1968. The Director General of Health Services has counted the previous services rendered by the applicant in the Defence department w.e.f 28.10.1960 to 04.01.1965 towards pensionary benefits. The applicant was also given benefit of second ACP scheme in the pay scale of Rs.6500-10500 (Senior Pharmacist) and as such the pension/gratuity of the applicant was revised and accordingly revised PPO was issued to the applicant. After issue of the order dated 09.03.2004, the Employees State Insurance Dispensary was requested to furnish certain documents vide letter dated 19.04.2004 as per the direction issued by the Director General, Health Services, New Delhi, copy of above mentioned letter was also given to

the applicant for necessary information and production of the requisite documents but neither the Employees State Insurance Department nor the applicant could provide the requisite, mandatory and essential documents. The Employees State Insurance Department has even informed vide letter dated 15.09.2004 that no required service documents, relating to applicant, are available with them. In para-16 and 17 of the counter affidavit, the respondents have clearly stated that since the averments contained in paragraph under reply are matter of record, however, in these paragraphs reference has been made with regard to respondent No. 4 and 5 whereas in the O.A. there are three respondents only.

5. The applicant filed Rejoinder Affidavit and reiterated the same facts as enumerated in the O.A. The respondents have also filed Supplementary Counter Affidavit denying the facts mentioned in the Rejoinder Affidavit.

6. We have heard Sri Ashish Srivastava, Counsel for the applicant and Sri Saurabh Srivastava, Counsel for the respondents, and perused the pleadings available on record.

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7. Before dealing with merits of the case, we may observe that the O.A. has been drafted in a most casual and perfunctory manner. There is reference of respondent No. 4, 5, 6, 7 and 8 in the body of O.A. but there are only three respondents in the array of parties. It was really an uphill task to dictate the Judgment. However, we have carefully seen the records and pleadings of the parties.

8. We have noticed that in compliance to the Order dated 08.11.2003 passed by this Tribunal in O.A. No. 03 of 2003 the representation of the applicant was decided by the competent authority. In his representation, the applicant had requested for placing him in the pay scale of Rs.6500-10500/- besides counting of his past services under various Organizations for the purpose of pension. It is evident from the perusal of record that the services rendered by the applicant in the Defence department w.e.f. 28.10.1960 to 04.01.1965 has been considered by the respondents authority, and his request for counting previous Military services as qualifying service, has been acceded to by the competent authority. It is seen from the records that since the applicant has opted for counting of Military services as qualifying service on civil post, and the applicant had also refunded gratuity to Defence department along with interest, the competent authority in the

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respondents department clearly held that the period w.e.f. 28.10.1960 to 04.01.1965 shall be counted for pensionary benefits. As regards services rendered by the applicant in Nagar Maha Palika, Kanpur w.e.f. 2.07.1965 to 16.10.1967 the competent authority clearly observed that there is nothing on record to show that the applicant has moved to this department with proper consent of parent department, and also there is nothing to show that his services in this Organization is to be countable for pension. After careful analysis of the entire case, the competent authority rightly came to the conclusion that the services rendered by the applicant in Nagar Maha Palika, Kanpur cannot be counted for pension purposes. As regards the Railway services rendered by the applicant w.e.f. 18.10.1967 to 19.10.1968, we may observe that the Office Memorandum of Department of Personnel and Training, referred by the applicant, is applicable only where the transfer of an employee from one organization to other was with the consent of organization where he was serving earlier. There is nothing on record to show that the applicant had applied for service in the Railways from Nagar Maha Palika through proper channel with prior permission of the administrative authority concerned. In these circumstances, we are fully satisfied that applicant's services in the Railways has rightly been declined to be counted for pension purposes.

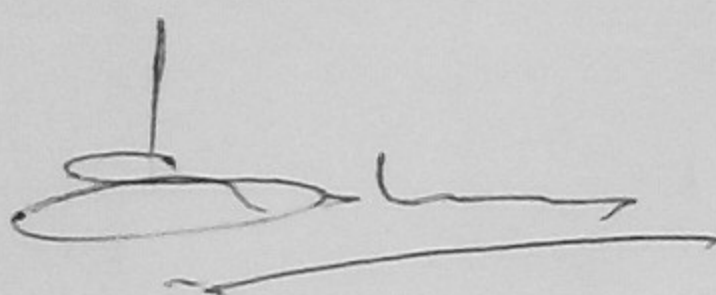
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As regards services rendered by the applicant in Employees State Insurance, Kanpur w.e.f. 01.03.1969 to 21.06.1976 is concerned, it is seen from the records that the applicant was appointed a Pharmacist in Employees State Insurance Dispensary, Kanpur w.e.f. 01.03.1969. There is, thus, a gap of more than four months from his resignation in the Railways and appointment in the Employees State Insurance Dispensary, Kanpur. There is also no indication in the letter dated 19.10.1968 of the Railway department accepting the resignation of the applicant, likewise there is no mention about his previous employer in the appointment order dated 27.02.1969 of Employees State Insurance Dispensary, Kanpur. We have also carefully seen the records and found that the Employees State Insurance Department has even informed vide letter dated 15.09.2004 that no required service documents, relating to applicant, are available with it. In these circumstances, case of the applicant, for counting his previous services of about 9-10 years for pension purpose, is not covered under the Office Memorandum of Department of Pension and Pensioner Welfare read with Orders of Department of Personnel and Administrative Reforms. The competent authority has, therefore, rightly declined to count applicant past services in different departments except Defence

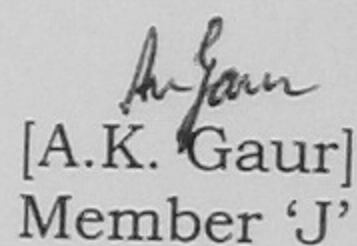
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department for the purpose of pension, for the reasons indicated above.

9. Having given our anxious thoughts^g to the pleas advanced by the parties' counsel, we are satisfied that the competent authority has rightly declined to count the previous services rendered by the applicant in Nagar Maha Palika, Kanpur, Northern Railway, Moradabad and in the Employees State Insurance Dispensary, Kanpur, and has counted the defence services in accordance with rules for pensionary benefits. We do not find any merit in the O.A. and accordingly same is dismissed. No order as to costs.



[S.N. Shukla]
Member 'A'



[A.K. Gaur]
Member 'J'

/M.M/