

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 25.02.2003

OA No.33/2002

Chhiter Mal Nayak s/o Shri Sua Lal r/o Near Bhumi Vikas
Bank, Chomu District, Jaipur at present working as Master
Craftsman, Chomu.

.. Applicant

VERSUS

1. The Union of India through the Secretary, Ministry of Textiles, Central Secretariat, New Delhi.
2. Deputy Director, Northern Region, All India Handicrafts Board (Northern Region), West Block No.7, Ramakrishna Puram, New Delhi.
3. Assistant Director (AD & Co.Old), Office of the Development Commissioner (Handicrafts) Carpet Weaving Training cum Service Centre, Dundlod House, Hawa Sarak, Jaipur.

.. Respondents.

Mr. Rajendra Soni, counsel for the applicant

Mr. P.C. Sharma, proxy counsel to Mr. Sanjay Pareek, counsel for the respondents

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. H.O.GUPTA.

The applicant is aggrieved of not treating his service as continuous from the date of his initial appointment but treating the same as fresh appointment

17

after being reinstated in compliance to the judgment of the Hon'ble Tribunal, in spite of the representation dated 14.11.2000 (Ann.A9) and the notice for demand of justice dated 19.12.01 (Ann.A11). In relief, he has prayed for appropriate directions to the respondents to treat him as continuous in service w.e.f. 23.10.78 as Craftsman and from May, 1982 as Master Craftsman for all purposes including seniority, pay, revision of pay, promotions, pensionary benefits etc.

2. The case of the applicant as made out, in brief, is that:-

2.1 He was appointed on to the post of Assistant Craftsman vide order dated 23rd October, 1978. Thereafter he was promoted on to the post of Master Craftsman w.e.f. May, 1982.

2.2 On 1st May, 1988, he received an urgent message from his home that his daughter was seriously sick and, therefore, he immediately rushed to his home town Chomu on 2nd May, 1988 after submitting leave applicant. Unfortunately, he also fell ill and remained under treatment up to 3rd August, 1988.

2.3 He received a memorandum dated 30.5.1988 alongwith a forwarding letter dated 27.6.1988 by which he was shown to have been absent from duty without leave and was directed to explain as to why disciplinary action may not be taken against him. He was also advised that he can be allowed to resume duty, if he seeks permission from the competent authority. However, no action was taken against the applicant after issuance of the said memorandum. When he was declared medically fit, he submitted an application

10

and reported for duty on August 6, 1988, but he was not allowed to join duty.

2.4 In his application dated 6.8.1988 (Ann.A2) to the Director (NR), he explained the entire circumstances and requested that he may be allowed to resume duty. His application was forwarded by the Carpet Training Officer, Bandi on 6.8.1988 itself with the recommendation that in the circumstances explained by the applicant, he may be allowed to resume duty.

2.5 He personally met the respondent No.3, who in turn, asked him to report for duty at Bandikui. Photocopy of his application dated 10.8.1988 may be perused from Ann.A3. He continued to report on duty, but he was not allowed to join duty. He again submitted an application on 11.10.1988 (Ann.A4) to the CTO, Bandikui to allow him to join duty, but no action was taken by the authorities to allow him to join nor any disciplinary action was taken against him. He also submitted representation dated 2.8.1989, but no action was taken. He submitted another representation to the Development Commissioner on 21.12.1989 (Ann.A5) but his efforts proved futile. Having failed from all corners, he submitted an application to the Hon'ble Prime Minister of India on 14.4.1990. Having remained unsuccessful in getting relief from the authorities, he served a notice of demand for justice and thereafter he filed OA No.87/92 before the C.A.T., Jaipur Bench. The said OA was disposed of vide order dated 3.3.94 (Ann.A6). In pursuance of the Tribunal's order, the respondents appointed him as a fresh entrant vide order dated 19.4.94 (Ann.A7) and vide order dated 4/7 October, 1994, he was appointed as temporary Assistant Instructor in

1

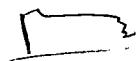
the pay scale Rs. 950-1500 w.e.f. 11.5.94 in the Carpet Weaving Training Centre (CWTC), Suliyali (Himachal Pradesh) by treating him as a fresh appointee in spite of treating him senior to those employees, who were initially appointed later than the applicant. He was also not given promotion benefits.

2.6 Thereafter, he filed a Contempt Petition No.86/95 for non-compliance of the order dated 3.3.94 but the Contempt Petition was dismissed vide order dated 13.4.2000 (Ann.A8) with the observation that if the applicant have any grievance regarding certain conditions in the order, he may prefer a separate OA. Thereafter he represented to the respondents vide his letters dated 14.11.2000 (Ann.A9) and 13.3.2001 (Ann.A10) for treating him on duty from the date of initial appointment and for granting him the seniority. He also gave a notice for demand of justice on 19.12.2001 (Ann.A11) but of no avail. Being aggrieved by the inaction of the respondents, he has filed this OA.

3. The main grounds taken by the applicant are as under:-

3.1 The action of the respondents for not treating his services as continuous for all purposes but treating him as fresh appointee, is illegal and arbitrary.

3.2 The Hon'ble Tribunal has given directions to the respondents to take him back on duty vide order dated 3.3.94 but in spite of the said order, the respondents are not treating the service of the applicant as continuous but given him appointment as a fresh appointee in the initial pay, which is totally illegal and arbitrary.



3.3 He has served the department for a long period since 1982 and forfeiture of his service of a long period prior to his reinstatement, is totally illegal, arbitrary and discriminatory.

3.4 The action of the respondents for not treating the applicant as senior to those employees who were initially appointed after the applicant and for not granting promotional benefits and also for treating him as a fresh appointee, is illegal and arbitrary.

3.5 After the judgment dated 3.3.94, he had given various representations to the respondents requesting for treating his service as continuous service, but the respondents are not following the directions given by the Hon'ble Tribunal in their judgment, which is contemptuous, arbitrary and contrary to the law.

4. The respondents have contested this application. Briefly stated, they have submitted that:-

4.1 He was offered the post of Assistant Instructor in the pay scale of Rs. 950-1500 vide memorandum dated 19.4.94. The applicant has accepted the same and joined his duty. Now after 8 years, the OA is not maintainable and is barred by limitation and therefore, liable to be dismissed.

4.2 The applicant was taken on duty in compliance to the order passed by the Tribunal. Prior to May, 1994, his services cannot be considered for regularisation or any other purpose. The applicant initially joined as Assistant Craftsman vide memorandum dated 26.10.78 (Ann.R1). It was made clear that he would be treated as Casual Labour and he would be paid consolidated monthly wages of Rs. 400/- only. The applicant was not promoted to the post of Master

11

Craftsman, but he was only engaged afresh on casual basis. He joined in the capacity of Master Craftsman on 12.5.82. His services were not found satisfactory. He was in the habit of remaining absent from duty. The Carpet Training Officer, Bandikui had warned him from time to time and directed not to remain absent from duty without intimating and without seeking prior approval of the higher authorities. He was also issued warning letters dated 25.8.86, 30.1.87 and 19.8.97 (Ann.R3 to R5), but of no avail. Vide his letter dated 26.5.88 (Ann.R6), the Carpet Training Officer, Bandikui had intimated the Assistant Director that the applicant was irregular in attending the centre. On the basis of the said letter, a memorandum was issued to the applicant on 30.5.1988 (Ann.A1). In his own application dated 6.8.1988 (Ann.R7), the applicant has admitted that he had left the centre without seeking permission to leave the station. Not only this, he has submitted false information in the application. According to him, he applied for leave on 2.5.88 but left the station on 1.5.88 night. Since the applicant was absent from duty unauthorisedly, a decision was taken not to allow him to join duty.

4.3 The applicant left the CWTC in the night of 1.5.1988 without submitting leave application. This position was informed to the Director (NR) vide letter dated 13.9.1988 (Ann.R8). The applicant had met the Assistant Director on 8.8.1988, but he was not directed to report for duty at CWTC, Bandikui. A copy of the letter of CTO, Bandikui dated 20.8.1988 (Ann.R10) is relevant in this regard. The letter dated 23.8.1988 (Ann.R11) shows that the applicant misled the CTO, Bandikui. He did not attend the

D

duty at the Centre even for a single day and sent a letter dated 17.9.1988 (Ann.R13) to CTO, Bandikui for leave through post. The applicant had sent another application dated 11.10.1988 and the entire information was sent to the Director (NR) vide letter dated 13.10.1988 (Ann.R15).

4.4 The applicant was paid for the days he worked till April, 1988. Thereafter he left the place of posting without any information and without submitting leave application. It was presumed that he had quitted the service.

4.5 In the earlier OA No.87/92 filed by the applicant, he had sought the following reliefs:

"(a) The respondents may be directed to allow the applicant to join duty in the office of respondent No.3 where he was working as Master Craftsman with effect from August 6, 1988 the day on which he reported himself for duty after he became medically fit.

(b) The respondents be directed to sanction the leave to the applicant on medical ground for the period 2.5.1988 to 5.8.1988 and it may be declared that the applicant has been in continuous service of the respondents.

(c) The respondents be directed to make payment of salary and other allowance to the applicant from 2.5.1988 till he resumes the duty and pay him all consequential benefits by treating him to be in continuous service of the respondents"

4.6 The Hon'ble Tribunal disposed of the said OA vide order dated 3.3.94 with the following observations/directions:

B

"We have heard the learned counsel for the parties and have gone through the records. The memorandum Annexure A-1 regarding appointment of the applicant makes it clear that if the applicant is absence from duty, wages will be deducted proportionately. The applicant was absent from duty for a period of about three months. If the terms of his appointment were to be adhered to, all that the respondents should have done is to take him back on duty but not pay him the pay and allowance for the period during which he was reportedly unauthorisedly absent. There is also the recommendation from the Officer Incharge of the Carpet Weaving Training Centre, Bandikui that the applicant's services are needed at the centre. Taking all these consideration in to account, we direct the respondents to take the applicant back on duty within a week from the date of receipt of this order."

The aforesaid directions clearly show that the Hon'ble Tribunal did not accept the entire prayer, as made by the applicant. In the earlier OA, the applicant had also claimed that he may be granted all consequential benefits by treating him to be in continuous service of the answering respondents but the Hon'ble Tribunal did not accept the same. After more than 8 years, the applicant is again claiming continuity in service. He is estopped in making any such claim in the present OA.

In the judgment dated 3.3.94 passed by the



Hon'ble Tribunal, the only direction was that the applicant be taken back on duty within a week from the date of receipt of the copy of the order. The Hon'ble Tribunal on the basis of the order dated 20.10.87 found the applicant entitled to reinstatement on the post of Assistant Craftsman which was re-designated as Assistant Instructor.

4.7 During the time he absented from duty, he was working on consolidated wage basis. Vide memorandum dated 19.4.1994, the services of the applicant has been regularised on the post of Assistant Instructor, which is an equivalent post to the Assistant Craftsman. The answering respondents have allowed much more benefits to the applicant than that granted by the Hon'ble Tribunal. At the time the applicant approached the Hon'ble Tribunal, he was not a regular employee, on the contrary, he was paid fixed salary. Neither regular pay scale nor any benefit relating to conditions of service were given to him. According to the order of the Tribunal, the applicant was required to be taken on duty on fixed salary basis, yet more benefits were granted by the answering respondents, inasmuch as, he was taken back on duty in regular pay scale. His earlier services cannot be clubbed with the subsequent service because the nature of appointment in both the services were entirely different.

4.8 The applicant has failed to point out the names of the persons who have been declared senior to him. In the absence of such detailed facts and also not impleading such persons as necessary parties, the contention raised by the applicant cannot be considered.

4.9 In the earlier OA, the applicant has also sought all consequential benefits which includes continuity in

B

service, fixation in pay scale, seniority, promotion etc. However, the Hon'ble Tribunal did not accept such prayers. Now, after more than 8 years, he cannot seek the same relief. The present OA is barred by the principles of res-judicata and the same is, therefore, liable to be dismissed.

5. The applicant has not filed rejoinder.

6. Heard the learned counsel for the parties and perused the record.

6.1 The learned counsel for the respondents argued at length on limitation. In the Contempt Petition filed by the applicant, the Tribunal vide order dated 13.2.2000 dismissed the same with the observation that if the applicant has any grievance regarding certain conditions in the order dated 3.3.94 in OA No.87/92 in taking him on duty, it is open to him to prefer a separate OA. He has filed this OA only in January, 2002, after a lapse of about 22 months. The contention of the applicant that he represented and was waiting for the reply of the respondents, does not impress us. There was no order for preferring any representation which itself was preferred on 14.11.2000 after 9 months of the observation in the Contempt Petition and only for grant of seniority from 12.5.82. He should have filed the OA within the time limit of one year prescribed in the A.T.Act. There is no application for condonation of delay as well. Accordingly, we hold that this OA is time barred.

6.2 The learned counsel for the respondents submitted that this case is barred by the principles of res-judicata. Under the relief in the earlier OA, the

B

applicant has also prayed for appropriate directions to the respondents to grant all consequential benefits by treating him to be in the continuous service of the respondents. The order dated 3.3.94 passed by the Tribunal in OA No.87/92 only directs the respondents for taking him back on duty within one week from the date of receipt of the order. There was no order for grant of consequential benefits and ~~the~~ prayer has ~~been~~ would mean that ~~the~~ been rejected. Accordingly, his prayer in the present OA for grant of consequential benefits by treating him to be continuous in service of the respondents for all purposes is required to be rejected being barred by the principles of res-judicata. We agree with the contention of the respondents and hold that this case is also barred by the principles of res-judicata.

6.3 The learned counsel for the respondents also submitted that the applicant was appointed only on consolidated salary. He was not placed in regular pay scale. No other benefit was granted to the applicant as is available to the regular pay scale personnel. The appointment order dated 4.5.82 (Ann.R2) clearly states that the applicant will not be treated as Govt. servant, he will not be entitled for any kind of leave and that he will not be entitled for any paid holidays except for three national holidays. It is clearly mentioned that appointment will be treated as casual. Therefore, unless the applicant is regularly appointed, he cannot claim for seniority, increment etc. The respondents have complied the order of the Tribunal and given substantial benefits to the applicant, inasmuch as, he has been appointed on an equivalent regular pay scale post with all benefits attached to the pay scale. The applicant has not even given

B

: 12 :

the names of the similarly placed persons who are alleged to have been regularised in preference to the applicant. He further submitted that none of their averments in the reply have been controverted by the applicant by filing rejoinder. Since the applicant was not placed in any pay scale and was only drawing the fixed salary, he cannot claim seniority and other benefits as attached to a pay scale. Since we have already held that the case is barred by limitation and also hit by the principles of res-judicata, it is not necessary to discuss the merit of this case.

7. In view of above discussions, this OA is dismissed. No order as to costs.

(H.O.GUPTA)

Member (Administrative)



(G.L.GUPTA)

Vice Chairman