

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 413 of 2003

Jabalpur, this the 12th day of August, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman

Hiralal Sarbariya
Son of Late Gangaram,
aged about 38 years,
Caste-Scheduled Caste,
Working as Upper Division Clerk,
Ordnance Factory Katni,
District-Katni(M.P.)

APPLICANT

(By Advocate - Ku. Malti Dadariya

VERSUS

1. Union of India,
Through : Secretary,
Ministry of Defence,
Sena Bhawan, New Delhi.
2. Chairman,
Ordnance Factory-Board,
10-A, S.K. Bose Road,
Kolkata (West Bengal) 7401.
3. General Manager,
Ordnance Factory Katni,
District Katni(M.P.)
4. Assistant Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, G.C.F. Estate,
Jabalpur 482001
5. Commissioner,
Kendriya Vidyalaya-Sangathan,
Head Quarter 18 Institutional Area,
Shaheed Jeet Singh Marg, New Delhi
110016.

RESPONDENTS

(By Advocate - Shri K.N. Pethia)

O R D E R (ORAL)

By filing this OA, the applicant has sought the following
main reliefs :-


"(i) to issue a writ in the nature of mandamus,
directing the respondents to count the past service of the
applicant rendered in Kendriya Vidyalaya Sangathan for
all purposes including Post Retirement benefit.

(ii) The impugned orders dated 31.5.1999 & 22.6.1999
(Annexure A-2 & A-3) may kindly be quashed".

2. The brief facts of the case are that the applicant was
appointed as a Group-D employee in Kendriya Vidyalaya Sangathan
(for short 'KVS') with effect from 13.7.1988. Thereafter he was

appointed as Lower Division Clerk in KVS w.e.f. 25.8.1995 to 12.10.1995. Later on, he was selected for the post of Lower Division Clerk in Ordnance Factory Katni and he joined as LDC in Ordnance Factory Katni on 13.10.1995. Thereafter, he was promoted to the post of Upper Division Clerk w.e.f. 1.4.2001. He has made a request to the General Manager, Ordnance Factory Katni to count his service rendered by him in KVS for the purpose of retiral benefits. The contention of the applicant is that while he was working in KVS he got his name registered with the Employment Exchange only with the permission of the KVS. After his selection in the Ordnance Factory, Katni he had also obtained no objection certificate from the KVS and the applicant has also been released by the KVS after his resignation was accepted. Despite this, the respondents have rejected the request of the applicant for counting the service rendered by him in the KVS.

3. The respondents in their reply have stated that the applicant was appointed as LDC in Ordnance Factory Katni w.e.f. 13.10.1995 under direct recruitment quota through Employment Exchange, Katni. It is noteworthy to state that the applicant has submitted his resignation letter dated 4.10.1995 before his appointment. The applicant was issued no objection certificate by the KVS on 26.9.1995 for joining other institution/organisations for his betterment and personal welfare and not particularly for joining the Ordnance Factory Katni. The applicant was also given no dues certificate as also the release order, inasmuch as, in absence of the same the resignation could not have been accepted and the departmental dues are to be fully adjusted before acceptance of resignation letter. According to the respondents, the applicant had not applied in any other department through proper channel for any post. The issuance of no objection certificate has no relevancy for the recruitment in Ordnance Factory, Katni, inasmuch as the same was given for his personal welfare and for better employment in respect of joining any

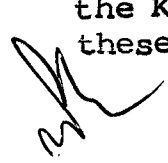


organisation/institution. The respondents have further stated that the applicant has been appointed through Employment Exchange under direct recruitment quota in the Ordnance Factory, Katni. The applicant had not applied through proper channel and the fact that the resignation of the applicant is not coming under the purview of technical formalities and also the fact that no service book is available with the respondent no.3, the grounds urged by the applicant are not tenable in the eyes of law.

4. Heard both the learned counsel of parties and perused the record carefully.

5. The learned counsel for the applicant has stated that since the applicant has registered his name with the Employment Exchange and he has been also relieved by the KVS to join the post of LDC in Ordnance Factory Katni, the resignation tendered by the applicant should be treated as technical resignation and he should be entitled for counting his past service rendered by him in the KVS for retiral benefits.

6. On the other hand, the learned counsel for the respondents has stated that the applicant has not applied through proper channel i.e. he has not sent his application through the department. The no objection certificate given by the department was only for the purpose of personal benefits and personal welfare and for better employment. Moreover, the applicant has submitted his resignation to join the Ordnance Factory Katni as LDC against direct recruitment quota. The KVS has not accepted his resignation. Acceptance of technical resignation by the authority accepting the resignation is a pre-condition for counting the previous service. Moreover, the KVS has stated that the applicant was neither on deputation to the Ordnance Factory Katni, nor his technical resignation has been accepted and he resigned the KVS on his selection under the direct recruitment quota. There is no provision in the KVS to forward his service book as asked for. In view of these facts, the applicant is not entitled for any relief.



7. We have carefully considered the rival submissions made on behalf of both the sides.

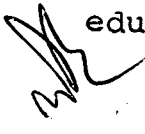
8. It is not in dispute that the applicant was initially appointed as a Group-D employee in KVS w.e.f. 13.7.1988. He worked upto 24.8.1995 as a regular Group-D employee and thereafter from 25.8.1995 to 12.10.1995 he had worked as Lower Division Clerk in KVS as stated by the applicant himself in para 4.1 of the OA. Vide letter dated 22.1.1992 (Annexure-A-5) the KVS has stated that the applicant had passed the 12th examination in 1990-91 with the permission of the department and, therefore, the KVS has no objection to get his name registered with the Employment Exchange, for a higher post. Para 12 of Chapter 18 of Swamy's complete Manual on Establishment and Administration- Ninth Edition-2003, deals with the procedure for serving personnel to enable them to seek higher posts through Employment Exchange. Para 12(ii) of aforesaid Chapter 18 stipulates that "with effect from 29-7-1970, permanent and quasi-permanent employees have also been allowed to register themselves with the Employment Exchange for a higher post under the Government Public Sector Undertakings/Autonomous Bodies on production of a 'No Objection Certificate' from the employers. The grant of such certificates to such permanent and quasi-permanent employees will, however, be subject to the following conditions:-

(a) The employee should be registered only for a post higher than the one he is holding under the Government...

(b) On being selected for appointment by the Government Department/Public Sector Undertaking/Autonomous Body for the higher post, he may be treated as on deputation/foreign service for a period of one year only. On the expiry of the period he should either revert to the parent Department or resign his post under the Government.


(c).....

The Employment Exchange would sponsor only those permanent and quasi-permanent employees for higher posts, under the Government/Public Sector who are eligible on grounds of age, educational qualifications, etc."




8.1 In this case, we find that the applicant has got his name registered with the Employment Exchange in the year 1992 while he was working as Group-D employee for higher post, and the department has granted the specific permission for registration of his name with the Employment Exchange for a higher post. The procedure laid down in Para 12 of Chapter 18 (supra) provides that in case an employee is selected for appointment for the higher post, he may be treated as on deputation/foreign service for a period of one year only and on expiry of the period he should either revert to the parent department or resign his post under the Government. In this case, the applicant was working as Lower Division Clerk in the KVS when he was selected on the same post by the Ordnance Factory, Katni. He should have, therefore, not gone on deputation to a higher post. Therefore, his previous service cannot be counted for the purpose of pensionary benefits as he has resigned from the post of LDC in KVS.

8.2 Rule 26(2) of the Central Civil Services (Pension) Rules, 1972, provides that "a resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies". The respondents have categorically stated in para 6 of their reply that the applicant "had not applied in any other department through proper channel for any post. The issuance of No Objection Certificate has no relevancy for the recruitment in Ordnance Factory, Katni, inasmuch as the same was given for his personal welfare and for better employment". Thus, the provisions of Rule 26(2) ibid are not applicable in the case of the applicant. As the applicant has not been appointed as LDC in Ordnance Factory Katni, as per the procedure mentioned in para 8 above the services rendered by him in KVS cannot be counted as qualifying service for the purpose of grant of pension and other retiral benefits.



9. In the result, for the reasons stated above, we do not find any merits in this Original Application and the same is accordingly dismissed, however, without any order as to costs.

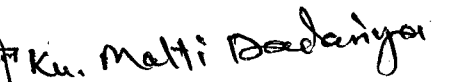
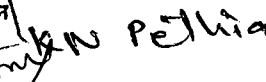

(M.P. Singh)
Vice Chairman

rkv.

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अर्थात् :-

- (1) सचिव, उच्च न्यायालय काउन्सिलर, जबलपुर
- (2) आदेशक श्री/श्रीमती/शु के काउंसिलर
- (3) प्रत्यक्षी श्री/श्रीमती/शु के काउंसिलर
- (4) ☒ संलग्न, कोषाध्यक्ष, न्यायालय काउंसिलर
सूचना एवं आवश्यक कार्यवाही हेतु


K. Malti Dadaniya

N. Pethia
मुख्य सचिव

Issued
On 23-8-04
BS