

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD,**

Allahabad, this the **15th** day of September. 2017.

Present :

Hon'ble Dr. Murtaza Ali, Member-J

Original Application No.585 of 2013

Baliram Kushwaha S/o Shri Sarvjeet R/o Village Devkathiya,
P.O. Velwa District Ghazipur.

.....Applicant.

By Advocate : Shri S.K. Singh Vashisth

VERSUS

1. Union of India through the Secretary of Finance Department, New Delhi.
2. The Chief Controller, Govt. Opium and Alkaloid Factories, New Delhi.
3. The General Manager, Govt. Opium Alkaloid Works Undertaking Ghazipur.

..... Respondents

By Advocate : Shri R.P. Singh

ORDER

The applicant has filed this O.A. under section 19 of Administrative Tribunals Act, 1985 for quashing the impugned order dated 19.12.2012 by which the representation of applicant for grant of pension has been rejected on the ground that he had not rendered qualifying service of 10 years.

2. The facts in brief, as stated in the O.A. are that the applicant was appointed as adhoc Laboratory Attender in the

office of respondent No.3 in the year 1976. A seniority list was issued by the respondents on 27.6.1986 in which he was placed at Sl. No. 4 and his adhoc services have been shown for 9 years. It is stated that he along with others had filed an O.A No. 1046/1987 seeking a direction to fill the permanent posts of Laboratory Attender out of the list prepared and absorb them on regular basis giving weightage of their services. The said O.A. was disposed of on 27.8.1993 (Annexure A-3) and the respondents were directed to absorb the applicants along with others within a period of 4 months. Aggrieved by the said order, the respondents had filed C.A. No.20157-58 of 1994 before Hon'ble Supreme Court. It is stated that Hon'ble Supreme Court had directed the respondents to consider them for Laboratory Attender vide order dated 22.11.1996 (Annexure A-4). It is further stated that during pendency of his Civil Appeal before Hon'ble Apex Court, the respondents stopped to take work from him and later on in compliance of order dated 23.11.1998 passed by Hon'ble Supreme Court in Contempt Petition NO. 323-324 of 1998 (Annexure A-5), the respondents appointed him as Seasonal Worker vide order dated 17.12.2000 (Annexure A-6). He was also regularized vide order dated 10.11.2003 and worked with respondent No. 3 upto 31.01.2010.

3. The applicant had also filed an O.A. NO. 1410 of 2010 against a list dated 9.12.2009 (Annexure A-8) issued by the

respondent No. 3 in which New Pension Scheme (N.P.S) was indicated against his name. The applicant also preferred a representation on 8.6.2012 and claimed that he is entitled for pension under Old Pension Scheme but the said representation has wrongly been rejected vide impugned order dated 19.11.2012.

4. Per contra, it has been submitted on behalf of respondents that the order of Tribunal to absorb the applicant and others on regular basis after giving the weightage of their services already tendered has already been quashed by Hon'ble Supreme Court and it was directed to consider the case of applicants for appointment on the three posts of Laboratory Attender. Considering the submissions made on behalf of Department, that no vacant post is available for applicants, Hon'ble Supreme Court directed that their request to be employed as Seasonal Worker may be considered by the department if they are willing for the same. The applicant along with others submitted their consent to be engaged as a Seasonal Worker vide letter dated 7.7.2000 (Annexure CA-1) and consequently the name of applicant was included in the list of Seasonal Workers vide order dated 22.12.2000 (Annexure CA-2). The applicant was engaged temporarily as Seasonal Worker from time to time during the year 2001, 2002 and 2003. Subsequently, the applicant joined as unskilled worker on

regular basis on 10.11.2003 and retired on 31.1.2010 on attaining the age of superannuation. He rendered qualifying service of 6 years 2 months and 21 days only and thus he is not entitled for pension. It is further stated that in compliance of order dated 9.12.2012 passed by this Tribunal in O.A. NO. 1401 of 2010, the representation of applicant for grant of pension has rightly been rejected vide impugned order dated 19.11.2011.

5. Heard Shri S.K. Singh Vashisth counsel for the applicant and Shri Ram Pal Singh counsel for the respondents and perused the record.

6. Learned counsel for the applicant would contend that the applicant had worked as adhoc Laboratory Attender for 9 years between 1976 and 1986. He was again appointed as Seasonal Worker vide order dated 17.12.2000 and was regularized w.e.f. 10.11.2003 and retired on 31.1.2010. It has been submitted that the period of his working as Laboratory Attender for 9 years and the period of working as Seasonal Worker should also be counted for qualifying service for grant of pension under Old Pension Scheme.

7. Learned counsel for the respondents did not deny the period of working as adhoc Laboratory Attender between 1976 and 1986 and contended that the applicant was again engaged

temporarily as Seasonal Worker from time to time during the year 2001, 2002 and 2003 for a specific short period ranging from 15 to 30 days at a time and subsequently he was appointed as unskilled worker on regular basis w.e.f. 10.11.2003. It has been admitted that the New Pension Scheme is not applicable in the case of applicant as he was appointed on the post of unskilled worker w.e.f. 10.11.2003. It has further been contended that the applicant is not entitled to pension under Rule 49 of CCS (Pension) Rules as he had rendered qualifying service of 6 years 2 months and 21 days only.

8. The main controversy involved in this OA is whether the period of adhoc Laboratory Attender of 9 years between 1976 and 1986 and the period of Seasonal Worker between 17.12.2000 and 9.11.2003 should be counted towards the qualifying service for entitlement of pension under Old Pension Rules.

9. It is not disputed that 50% of service rendered by an employee under temporary status is counted for the purpose of retirement benefits after his regularization in terms of O.M dated 10.9.1993. As per instructions contained in the OM dated 10.9.1993, temporary status was to be conferred on all casual labourers who were in employment on the date of enforcement of said O.M and who had rendered a continuous service of

atleast 1 year. It appears that the applicant was not in employment on 1.9.1993 and he did not render a continuous service of atleast 1 year, therefore, he could not be conferred temporary status. A Government servant is entitled to pension after rendering 10 years qualifying service. As the applicant had not rendered 10 years qualifying service and he was not granted temporary status under O.M dated 10.9.1993, being ineligible, his service rendered as Seasonal Worker cannot be counted towards qualifying service for the purpose of pension and other retiral retiral dues.

10. In view of Casual Labourers (Grant of Temporary Status and Regularization) Scheme 1993 of government of India, the 50% of service rendered under temporary status is to be counted for the purpose of retirement benefits only after regularization. As the applicant was not granted temporary status as he was not eligible under the said scheme, he cannot seek the benefit of service rendered as Seasonal Worker between 17.12.2000 and 9.11.2003.

11. The learned counsel for the applicant has also failed to produce any provision of law for considering the services rendered by the applicant between 1976 and 1986 as adhoc Laboratory Attender for counting in the qualifying service of the applicant for the benefit of pension and other benefits.

12. Considering all the facts and circumstances, I am of the view that as the applicant has not rendered 10 years qualifying service for grant of pensionary benefits under Old Pension Rules, he is not entitled for grant of pension.

13. Accordingly, OA is dismissed. There is no order as to costs.

Member (J)

Manish/-