

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.451/2016

Dated this Friday the 10th day of February, 2017

CORAM: HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER (A)

R.K. Chaturvedi
R/at V-401, Lodha Regency
Sandapgaon, Manpada Rd.,
Dombivli (E), Dist.Thane 421 203.
(Advocate Ms. Nisha Agarwal)

... Applicant

Versus

1. Union of India, through
the Secretary,
Ministry of Micro, Small &
Medium Enterprises, Udyog
Bhavan, New Delhi 110 011.
2. Khadi Village Industries Commission,
Through its Chairman,
O/o 3, Irla Road, Vile Parle (W),
Mumbai 400 056.
3. Chief Executive Officer
Khadi Village Industries Commissioner
3, Irla Road, Vile Parle (W),
Mumbai 400 056.
4. Deputy Chief Executive Officer
(Administration)
Khadi Village Industries Commissioner
3, Irla Road, Vile Parle (W),
Mumbai 400 056.

... Respondents

(Advocates Shri R.R. Shetty)

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant retired from the post of
Deputy Director (Trading) on 31.12.2011 from the
Khadi Village Industries Commission (KVIC) under

the Ministry of Micro, Small & Medium Enterprises (MSME) Government of India. He has filed this OA aggrieved by non-payment of pension on his superannuation.

2. The brief facts of the case, as they appear from the OA, are as follows:

i) The Applicant had joined the KVIC as a Junior Research Officer under its Science and Technology Programme on 12.09.1983. He was absorbed as Assistant Director (Training) w.e.f. 20.12.1991 as per order dated 23.01.1992 (Annexure A-3) which provided that his services rendered under the Science and Technology would be counted for all administrative purposes including pensionary benefits. The relevant portions of the order reads as follows:

“1. The services rendered under Science & Technology will not be counted for the fixation of seniority on absorption in the regular post. He will be shown next below the person in that particular cadre in the seniority from the date of his appointment in the regular establishment.

2. His services rendered under S & T will be counted for all the administrative purposes, which includes carry forward of leave and other pensionary benefits.

3. His C.P.F. Contribution will be decided within the proviso of S.C. 1475 in the way it has been decided in the case of pensioners.”

ii) The Applicant was subsequently appointed

as Deputy Director (AT) under the Trading cadre of the KVIC vide order dated 14.08.1992 (Annexure A-4). Relevant portions of the order reads as follows:

“....2. The post of Dy.Director, AT, Trading to which he is appointed is purely temporary. He will be treated as on deputation to Trading Operations. His lien will be maintained against the post of Asstt. Director in the Training cadre, Leave Salary and Pension contributions on his behalf will be credited to Non-plan funds from the Trading Operations annually in lumpsum. The rate of leave salary and pension contribution will be worked out by Adm-IV Section, in consultation with Post Audit and credited to the Non-plan funds”.

iii) The Deputation was for a period of five years i.e. upto 01.09.1997. The services under the Trading Operation are non-pensionable. On 17.07.1992 the KVIC had issued a Standing Order No.1499 dated 17.07.1992 regulating the terms and conditions of appointment of regular employees under Trading Operations. Para 2 of the Standing order reads as follows:

“2. The issue was considered by the Commission at its meeting held on 26.05.1992 and the Commission has approved the following guidelines for appointment of employees working under regular establishment on selection/direct recruitment under Trading Operations:-

- i) As far as possible, no employee under regular establishment should be selected for appointment under Trading Operations, as such appointments create administrative difficulties.*
- ii) If at all the Services Board/DSSC selects a person under regular establishment for a post under Trading Establishment, he should be treated as on deputation to the Trading Establishment for*

a period not exceeding five years and leave salary and pension contribution should be credited to the non-plan fund as per normal deputation terms. The employee may also be given an option to draw pay either under Trading Operations fixed under normal rules or draw pay at the rate admissible under the regular establishment plus deputation allowance as per the rules. It should be made clear to them that for pensionary benefits their substantive pay will only be taken into account not the pay drawn under Trading Establishment.”

iv) The Applicant was drawing the substantive pay at the rate admissible under regular establishment along with the deputation allowance as per rules. The Applicant claims that he was allowed to continue as Deputy Director (Trading) vide order dated 04.09.1997 (Annexure A-6) Which reads as follows:

“Vide order No.Adm-I/ORW/7(57) dated 14/18.8.92, Shri R.K. Chaturvedi, Asstt. Director(Trg) was appointed as Dy. Director(AT) under Trading Operation on deputation basis for the period of 5 years as per the terms and conditions of Standing Order No.1499 dated 17.7.92. The said period was over on 1.9.97. Since Shri Chaturvedi was selected against a post of Dy. Director under AT, Trading and worked for 5 years in the said post, it is now decided to continue him in the post of Dy. Director, under Trading-

2. On his regular appointment as Dy.Director under Trading, he is transferred and posted to work as Manager, K.G. Bhavan, Lucknow and take charge from Shri Asad Malik, Asstt. Director. He will also hold the additional charge of Manager, K.G. Bhavan, Rishikesh (with Hqrs ...Lucknow) without any additional and remuneration and take the charge of the K.G. Bhavan, Rishikesh from the Incharge. After handing over charge of K.G. Bhavan, Lucknow Shri Asad Malik, Asstt. Director will continue to work in K.G. Bhavan, Lucknow.

3. *S/Shri Chaturvedi and Asad Malik should prepare proper handing over notes. Shri Chaturvedi should get him self relieved in consultation with Director, State Office, Lucknow.*

4. *This is issued with approval of Chief Executive Officer."*

v) The Applicant worked as Deputy Director (Trading) under the Trading Establishment of KVIC till he retired on 31.12.2011. Prior to his appointment in the KVIC, he was working in National Sample Survey Office (NSSO) (FOD) of the Government of India from 27.07.1974 to 09.09.1983 and therefore, claims that this period should be treated towards his pensionary benefits as per the DOPT OM dated 29.08.1984 (Annexure A-7). The Applicant claims that the NSSO (FOD) had discharged its pension liability by paying terminal gratuity and retirement gratuity of the applicant in lump-sum as a one-time payment to the Respondent No.2 (KVIC).

vi) The office of the Principal Accountant General, Maharashtra had written a letter to the Director (Administration) of KVIC on 29.07.2012 which reads as follows:

"Sub: R.K. Chaturvedi Retd Dy.Director Pension regarding.

Ref: Your office letter No. Admn1/3(622) dated 21.06.2012.

Kindly refer your letter cited above seeking

the opinion of this office in the case of Shri R.K. Chaturvedi regarding counting of past service spent by him with NSSO for pension purposes before his absorption.

The case in r/o Shri R.K. Chaturvedi has been studied in the light of OM No.28/10/95-P&W(B) dated 30th May, 1995 and OM No.28/10/84-pension Unit dated 29th August, 1984 and opined that:

1. The O.M. in para 2 states that 'The amount should appropriately be calculated pro-rata based on length of service rendered and would comprise of the terminal gratuity or service gratuity of pension, as the case may be, AND retirement gratuity for the employees on pensionable establishment'. Thus, in addition to terminal gratuity, a proportionate amount of retirement gratuity also has to be discharged by the previous employer.

2. In the OM dated 29th August 1984 Para 3(a)(i) it has been stated 'Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the services rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body, irrespective of whether the employee was temporary or permanent in Government'. The condition for the same is laid down in above OM at para 5(1).

The case of Shri R.K. Chaturvedi may be regularized in the light of the OM mentioned above."

vii) The Applicant had made repeated representations for grant of pension. His case was considered in the KVIC's 623rd meeting on 26.03.2014 and the following Resolution was passed:

"1. Commission approved counting of past services rendered by Shri R.K. Chaturvedi, Dy. Director (Retd) in NSSO, Govt. of India, New Delhi from 27.07.1974 to 09.09.1983 by condoning two days break from 10.09.1983 to 11.09.1983 and service rendered in regular establishment of KVIC from 12.09.1983 to 01.09.1992 for pensionary benefits represented by Shri

R.K. Chaturvedi, Dy . Director who retired from the service of the commission on superannuation on 31.12.2011 under trading establishment.

2. Commission further approved counting of five years continuous service from 2.9.1992 to 1.9.1997 rendered by Shri R.K. Chaturvedi, Dy.Director (Rtd.) in 'trading operations' on deputation basis for pensionary benefits."

viii) He was informed of this vide letter dated 25.04.2014 which reads as follows:

"With reference to his representation for counting of past service for pensionary benefits, it is informed that his representation has been examined by this office thoroughly and in pursuance of decision of the Commission taken in its meeting held on 26.03.2014, the past service rendered in NSSO, GOI, New Delhi from 27.7.1974 to 09.9.1983 by condoning two days break from 10.09.1983 to 11.09.1983 and service rendered in regular establishment of KVIC from 12.09.1983 to 01.09.1992 and five years continuous service from 02.09.1992 to 01.09.1997 rendered by you under trading operation on deputation basis is counted as qualifying service for pensionary benefits under KVICE (Pension) Regulations, 1984 and S.O. No.1683 dated 23.07.2009.

This is issued with the approval of CEO."

ix) However, on 11.06.2015 the following order was passed:

"WHEREAS Shri R.K. Chaturvedi, Dy. Director (EcR) (Rtd.) has represented for non-payment of pensionary benefits on his retirement from the services of the office of the Commissioner for Khadi & Village Industries.

WHEREAS all the retirement benefits have been duly paid to Shri R.K. Chaturvedi, Dy. Director (EcR) (Rtd.) on his retirement, except pension as his claim for pension vis-a-vis his entitlement for the same was pending for consideration and a final decision.

NOW THEREFORE, after carefully considering all facts and circumstances and also keeping in view KVIC Pension Regulations, the competent authority has come

to a conclusion that Shri R.K. Chaturvedi, Dy. Director (EcR) (Rtd.) is not entitled for payment of Pension under KVIC Pension Regulations and this decision is 'final and conclusive'.

Against this, the applicant submitted a representation to the Commissioner, KVIC. The Ministry of Micro, Small and Medium Enterprises (MSME) also wrote a series of letters on 16.06.2015, 07.08.2016 & 16.09.2015 to the Chief Executive Officer, KVIC requesting them to sanction pension to the applicant. On 12.10.2015 the Chief Executive Officer, KVIC had written to the Ministry of MSME justifying the non-sanction of the pension amount to the applicant. The said letter reads as follows:

“May kindly refer to your DO letter No.C-13019/3/2013-KVI-II dated 16.09.2015 requesting therein to relook into the entire matter of Shri R.K. Chaturvedi, Dy. Director (Retd.) and take an objective and just decision.

2. *It is to inform in this regard that the case of Shri R.K. Chaturvedi has already been re-examined thoroughly with reference to all the related documents in light of KVICE Pension Regulations, 1984.*

3. *In regards to decision taken by the Commission in its meeting held on 26.03.2014 approving counting of past service rendered by Shri R.K Chaturvedi it is to inform that:-*

“There is no question of denial of bonafide entitlement of pensionary benefit to Shri Chaturvedi or contravention of the decision of the Commission taken in its 623rd meeting dated 26.03.2014. Rather, the implementation part of the said decision of the Commission was reviewed as it was prima facie found to have been taken by

not reckoning to many relevant Regulations of KVIC (Pension) Regulations 1984, which may lead to wide spread repercussion of inviting representation for pensionary benefits from many employees superannuated from the Trading Establishment and thereby putting KVIC in many legal entanglements.”

4. *In regards to the contention/remark that an employee posted to a Trading cadre post does not make him a trading employee & vice-versa, it is to inform that:-*

“The case of Shri Chaturvedi was not determined merely on the basis of posting to work in the Trading establishment, it was on the basis of his selection to a Trading post for which he had applied and he was selected to the Trading post and finally retired from the said post of trading establishment”.

x) The Applicant submitted a further representation on 20.08.2015 praying for grant of pension. In the said representation he put forth the ground that he was never asked to exercise the option to join back in the regular establishment of KVIC. Moreover, Standing order No.1683 issued on 23.07.1997 does not debar him from pension even when he had retired from the Trading establishment of the KVIC. Till his retirement in the Trading Establishment of the KVIC on 31.12.2011, he had contributed towards General Provident Fund without any contributory provident fund from the KVIC and, therefore, he is entitled to the pensionary benefits for the entire services rendered in the KVIC. The Applicant has also cited the decision of the

Hon'ble High Court of Delhi in the case of ***Smt. Mohini Devi Pandey Vs. KVIC, WP (C) No.6991/2001 C.M. No.12017/2001 decided on 08.07.2009*** wherein the right of an employee of the Trading Establishment of the KVIC for pensionary benefits was upheld.

xi) On 10.12.2015, the Ministry of MSME had again written a letter to the KVIC requesting them to process the case of the applicant for release of pensionary benefits. On 07.01.2016 the CEO, KVIC wrote back to the Ministry of MSME that had Shri Chaturvedi retired from regular establishment, he would have been eligible for pensionary benefits as per rules. Since he retired from the Trading Establishment, he did not fulfill the relevant requirement of KVIC Pension Regulation, 1984.

xii) The Applicant had earlier filed an OA No.56/2016 and this Tribunal in its order dated 18.02.2016 had directed the respondents to pass necessary orders on the representation of the applicant within a period of eight weeks from the date of receipt of a copy of the Tribunal's order. Following this, the Advocate of the applicant had issued a notice to the KVIC to comply with the order of this Tribunal. The KVIC

have passed the impugned order on 04.04.2016 which reads as follows:

“In compliance of order dated 18th February, 2016 of the Hon'ble Central Administrative Tribunal, Mumbai Bench, Mumbai passed in OA No.56 of 2016 filed by Shri R.K. Chaturvedi, Ex-Dy.Director, KVIC against Union of India & KVIC, I have gone through the representation dated 18.06.2015 of Shri R.K. Chaturvedi in light of letter dated 10.12.2015 of the Ministry of MS&ME, Govt. of India carefully. I have also examined the entire available records pertaining to Shri R.K. Chaturvedi and the relevant rule position contained under KVIC Employees (Pension) Regulations, 1984 and various instructions issued by the KVIC in the form of Standing Order on the subject of regulating the service of the employees for pensionary benefit.

2. *I found that prior to joining Khadi & V.I. Commission, Shri R.K. Chaturvedi was serving in National Sample Survey Organisation, a Department of Ministry of Planning, Govt. of India. Shri R.K. Chaturvedi served in the National Sample Survey Organisation from the period from 27.07.1974 to 09.09.1983 (i.e. for 9 years, 1 month and 13 days).*

3. *Shri R.K. Chaturvedi joined the KVIC w.e.f. 12.09.1983 as Jr. Research Officer under S&T which is Schematic Establishment. He served upto 19.12.1991 (i.e. for 8 years, 3 months and 7 days). The service rendered by Shri R.K. Chaturvedi under Schematic Establishment would have been counted for pensionary benefit in terms of Standing Order No.1500 dated 28.08.1992 if he had retired from the regular establishment. Thereafter, vide an order dated 23.01.1992, he was absorbed in the post of Asstt.Director (Training) w.e.f. 20.12.1991 under Regular Establishment, which is covered by the KVIC Employees (Pension) Regulations, 1984 for pensionary benefit and he served upto 01.09.1992 (i.e. for 8 months and 13 days.)*

4. *Vide order dated 14.08.1992, Shri R.K. Chaturvedi was again selected as Dy. Director under trading establishment on deputation for 5 years terms with lien to the last post under Regular Establishment*

of the Khadi & V.I. Commission. He continued to serve in the trading establishment till he superannuated on 31.12.2011 without exercising the option to join back in the regular establishment. The Standing Order No.1407 dated 21.09.1987 stipulates that service rendered under Trading Establishment under deputation will be treated as service rendered under Regular Establishment subject to condition that if the Deputationist joins back to his original post under regular establishment as soon as the period of 5 years of deputation gets over as it is mentioned in the Standing Order that the period of absence from the regular establishment should not exceed 5 years.

5. Further, the condition stipulated in the Standing Order says that those who have not returned back to the regular establishment within a period of 5 years will be deemed to have opted to continue under trading establishment and they will be governed by the benefits admissible under trading establishment.

6. As per the terms and conditions as laid down under the aforesaid Standing Order, Shri R.K . Chaturvedi was required to exercise option to join back in regular establishment but he did not exercise the option to join back to he regular establishment and he vide letter of joining/acceptance opted to continue in the trading establishment and finally retired from the trading establishment on 31.12.2011 which does not make him entitled to get the pension as is permissible to those employees who have retired from regular establishment.

7. I have also gone through the rule position regulating the grant of pension to the employees of Khadi & V.I. Commission contained in the KVIC Employees (Pension) Regulations, 1984. The Regulation 2 of the KVIC Employees (Pension) Regulations, 1984 deals with the applicability of regulations. It speaks that these regulations shall apply to all employees of the Commission borne on the regular establishment of the Commission appointed substantively to the post, but shall not apply to the employees of Commission in the trading establishment.

8. It is evident from the aforesaid rule position that the employee working under trading establishment of the Commission is not covered under the aforesaid

Pension Regulations. Shri R.K. Chaturvedi has retired from the trading establishment on his superannuation w.e.f. 31.12.2011. In view of the rule position, Shri R.K. Chaturvedi is not entitled for the benefit of pension which is applicable to the employees working under regular establishment. As such, the employees under trading establishment cannot claim for pension being entitled for the same.

9. *It is also revealed that the Commission had taken a decision in its meeting held in the month of March, 2014 and decided to count the past service of Shri R.K. Chaturvedi rendered in NSSO, Govt. of India, New Delhi w.e.f. 27.07.1974 to 09.09.1983, service rendered in regular establishment of Khadi & V.I. Commission w.e.f. 12.09.1983 to 01.09.1992 and five years continuous service from 02.09.1992 to 01.09.1997 in 'trading operation' on deputation basis for Pensionary Benefits. As this decision of the Commission was in contravention of the provisions of KVIC Employees Pension Regulation, it was decided to review the said decision by the then Commissioner, who was exercising the power of the Commission. Accordingly, a decision was taken to the effect that Shri R.K. Chaturvedi is not entitled for pensionary benefit and accordingly he was informed of the same vide order dated 11.06.2015. In view of this decision of the Commissioner, the pension paper submitted by Shri R.K. Chaturvedi in the light of the decision of the Commission, the same could not be processed.*

10. *I found that Shri Ramaswamy, Ex.Development Officer has retired from the regular establishment of the KVIC after completing qualifying service of 10 years. As Shri Ramaswamy fulfilled the requisite criteria of qualifying service of 10 years under regular establishment as laid down under Standing Order No.1683 dated 23.07.2009, he was granted pro rata of pension. As Shri R.K. Chaturvedi did not fulfill the requisite criteria of minimum qualifying service of 10 years in the pensionable establishment, his case does not merit for consideration.*

11. *From the position stated herein above, it can be seen that Shri R.K. Chaturvedi has served for total period of 9 years, 9 months and 26 days only under regular establishment in both organisations {i.e. National Sample Survey Organisation and KVIC as*

Asst.Director (Training)}. Thus the total service rendered by Shri R.K. Chaturvedi in both the organisations under Pensionary Scheme is less than 10 years. As per the conditions stipulated under the Standing Order No.1683 dated 23.07.2009, the employee is required to complete qualifying service of 10 years under regular establishment. As Shri R.K. Chaturvedi does not fulfill requisite qualifying service of 10 years under regular establishment, his case does not come within the ambit of Standing Order No.1683 dated 23.07.2009 and as such same cannot be considered for pension.

12. Keeping in view the facts mentioned above and the legal position, I do not find request of Shri R.K. Chaturvedi for grant of pension as tenable. As such, Shri Chaturvedi is not entitled for pension. The representation of Shri R.K. Chaturvedi is disposed of accordingly.

Sd/-
Chief Executive Officer”

xiii) Aggrieved by the impugned order, the applicant has filed the present OA praying for the following reliefs:

“8(A) This Hon'ble Tribunal may please allow this Original Application and

i) hold that the impugned order dated 05.04.2016 issued by the Respondent Nos.2 to 4 is illegal, bad in law and quash and set aside the impugned order dated 05.04.2016 issued by the Respondent Nos.2 to 4.

ii) direct the Respondent No.2 commission to grant pensionary benefits to the applicant for the services rendered by him from 27.07.1974 till 31.12.2011 as also pay all the arrears of Pension along with simple interest of 9% per annum and compensation as deemed fit by this Hon'ble Tribunal.

iii) penalize and punish the Commission officials responsible for the delay in starting the applicant's pension.

B. Cost of this application may be provided.

C. *Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of this matter.*

D. *Liberty to add, alter etc the application."*

3. In para 5 of the OA, the applicant has based his prayer on the following grounds:

"Applicant submit that the impugned decision dated 05.04.2016 taken by the Respondent No.2 to 4 is illegal, mala fide, perverse, arbitrary and bad in law. In the above said facts and circumstances the interim reliefs sought to by the applicant are imminently just and necessary in the interest of law, justice and equity pending the hearing and final decision of this petition. That the same may therefore be granted to the applicant."

4. The Respondents in their reply filed on 26.09.2016 had contested the claim of the Applicant. It is their contention that the applicant had served the KVIC for a period of 8 years 3 months and 7 days from 12.09.1983 till 19.12.1991 as a Junior Research Assistant under S & T which is a scheme - based post. He was absorbed as Assistant Director (Training) w.e.f. 20.12.1991 vide order dated 23.01.1992 and continued up to 01.09.1992. Thereafter he was selected as Deputy Director under the Training Establishment on deputation for a period of 5 years with a lien in the post of Assistant Director (Training) under the regular

establishment of KVIC. He continued to serve in the Trading Establishment till his superannuation on 31.12.2011. He did not exercise the option to come back to the regular establishment on completion of 5 years of deputation. The service rendered in the Trading Establishment is non-pensionable. The Standing Order No.1407 dated 21.09.1987 provides that the service rendered in the Trading Establishment can be counted towards pensionary benefits, if within the period of 5 years or at the end of deputation the employee opts to go back to the regular establishment. In the case of the applicant, he failed to do so and therefore, he is not entitled to pension. The Respondents have also refuted the claim of the applicant that while on deputation in the Trading Establishment he was drawing his pay at the rate admissible under the regular establishment plus the deputation allowance. On the other hand, the applicant had opted to draw the pay in the post of Deputy Director (AT) under Trading Operations. The question of counting of past service for pensionary benefits arises only when the Government servant switch over from one pensionable service to another pensionable service with the approval of the Administrative

Ministry and on exercising the necessary option by the Government servant. When the applicant had joined as Junior Scientific Officer in the Commission under Schematic Establishment w.e.f 12.09.1983 it was non-pensionable. Since the applicant had not completed 10 years of service with his past employer i.e. NSSO, the NSSO had paid only service gratuity to the KVIC and no pro-rata pension was released. The Respondents submitted that the earlier decision by the Commission's 623rd meeting dated 26.03.2014 was against the provisions of KVIC employees Pension Regulation and therefore, it was subsequently revoked by the Commissioner when he was exercising the full powers of the Commission. The applicant was informed of the decision of the Commissioner vide order dated 11.06.2015. When the applicant was absorbed under the regular establishment w.e.f. 20.12.1991 his earlier CPF Account was converted to GPF and was continued when he joined the post of Deputy Director (AT) under the Trading Establishment w.e.f. 02.09.1992. The Respondents have counted 9 years, 9 months and 26 days as the total period of eligible service for pensionary purposes in NSSO and KVIC {in the post of Assistant Director

(Training)}). Since the total service rendered by the applicant in a pensionable job is less than 10 years, the applicant has not completed the qualifying service and is, therefore, not entitled to pension. The Standing Order No.1683 dated 23.07.2009 (Annexure R-3) is not applicable in the case of the applicant as he has not rendered 10 years of service under regular establishment. Similarly the judgment of the Delhi High Court in ***Smt. Mohini Devi Pandey (supra)*** will not be applicable for the applicant since he has not put in 10 years of service under regular establishment unlike the petitioner in the WP who had rendered 16 years of service under regular establishment from 1962 to 1978 and serving under the Trading Establishment from November 1989 to November 1997.

5. In the Rejoinder filed by the Applicant on 07.10.2016 he has reiterated that as per the terms and conditions of his appointment as Assistant Director (Training) w.e.f. 20.12.1991 his services rendered under the S&T Programme were counted for all administrative purposes including for pensionary benefits. His CPF contribution was transferred to non-plan account of KVIC as per Standing Order No.1475. Similarly,

his appointment as Deputy Director under the Trading cadre was issued to him under Standing Order No.1499 on 17.07.1992 and not as per Standing Order No.1407 dated 21.09.1987. In his appointment order, it was specifically mentioned that other terms and conditions of his services under the commission will remain unchanged. He was allowed to contribute towards GPF till his retirement in KVIC. For the period that he worked in NSSO (FOD) of the Government of India from 27.07.1974 to 09.09.1983 his pro-rata pensionary benefits were transferred by NSSO (FOD) to KVIC. It is the applicant's contention that the respondents had decided to continue him as Deputy Director in the Trading Establishment after 01.09.1997 and he was not given an option to return to the regular establishment. The Applicant claims that the services rendered by him in NSSO (FOD) from 27.07.1974 to 09.09.1983, in KVIC from 12.09.1983 to 01.09.1992 and his deputation period from 02.09.1992 to 01.09.1997 are pensionable. This constitutes about 23 years of service to make him eligible for pensionary benefits. This was confirmed by the KVIC in its 623rd meeting dated 26.03.2014. It was wrong on the part of the Commissioner KVI to review the

decision of the full fledged commission after a lapse of 2 years to deny him pensionary benefits. The Ministry of MSME has also supported the case of the applicant and the Commissioner KVIC is bound by the advice and direction by the Central Government. The Applicant has relied upon a letter dated 26.04.2016 (Annexure A-25) to show that no note was prepared by the Directorate of Adm & Hr. of the KVIC to review the commission's decision taken in its 623rd meeting dated 26.03.2014.

6. The Respondents have filed a Reply to the Rejoinder on 30.11.2016 in which they have reiterated that the applicant has rendered pensionable service from 27.07.1974 to 09.09.1983 in NSSO for a period of 9 years, one month and 13 days and for 8 months and 13 days from 20.12.1991 to 01.09.1992 in the KVIC. These two periods taken together come to only 9 years, 9 months and 26 days which fall short of 10 years of regular service which would have made the applicant eligible for pension. The period between 12.09.1983 to 19.12.1991 when the applicant was in a schematic post does not entitle him to pension. Similarly the period of service in the Trading Establishment from 02.09.1992 to

31.12.2011 also does not entitle him to pension. The Applicant had enjoyed the higher salary of the non-pensionable establishment during the period he spent in the Trading Establishment and having done so, he will not be eligible for pension. The Respondents have annexed a statement to show the difference in pay drawn by the applicant, had he worked in the regular establishment, to show that the applicant had drawn a higher amount of salary while in Trading Establishment.

7. The Applicant had filed a reply to the sur-rejoinder on 08.12.2016 harping on the decision taken by the Commission in its 623rd meeting to make him entitled to pensionary benefits. He has reiterated that he contributed towards the GPF instead of EPF during the period in Trading Establishment which entitles him to pension. He also claims that he has been granted protection by the Appointment letter dated 14.08.1992 wherein it was mentioned that other terms and conditions of his service under the Commission will remain unchanged. It is his contention that, had he got himself reverted to the regular establishment, he would have got financial benefit of two ACP/MACP as well as

promotion to the higher post of Deputy Director and Director under regular cadre of commission and his retirement benefits would have been much higher compared to Rs.1,54,043/- shown as excess salary by the respondents paid to the applicant.

8. I have heard the learned counsels for both the parties and perused the records attached to the OA. I had also directed the respondents to produce the file relating to the pension claim of the applicant. I have gone through the records in the file submitted by the respondents. The point in dispute in the present OA is whether the applicant will be entitled to pensionary benefits in the background of his services in the NSSO, in the regular establishment of KVIC and in its Trading Establishment.

9. A perusal of the records show that the applicant has rendered services to the Government in the following organizations;

<i>Sr. No.</i>	<i>Organisation</i>	<i>Period</i>	<i>Remarks</i>
1	NSSO	27.07.1974 to 09.09.1983	Pensionable service
2	Jr. Research Officer (S&T) KVIC	12.09.1983 to 19.12.1991	Non-pensionable service.
3	Assistant Director (Training) KVIC	20.12.1991 to 01.09.1992	Pensionable service
4	Dy. Director (AT) KVIC Trading Establishment.	02.09.1992 to 01.09.1997	On Deputation from Establishment of KVIC.

5	Dy. Director (Training) Trading Establishment of KVIC.	02.09.1997 till 31.12.2011	Non-pensionable.
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10. In his order of appointment as Assistant Director (Training) (Annexure A-3), it was mentioned that his services rendered under S&T will be counted for all administrative purposes which includes carry forward of leave and other pensionary benefits. However, the respondents have pointed out that since he got absorbed in the Trading establishment, he forfeited the benefit of pensions for this period.

11. The order dated 14.08.1992 clearly mentioned that his lien will be maintained against the post of Assistant Director in the Training cadre and leave salary as well as Pension contributions on his behalf will be credited to the Non-Plan funds from the Trading Operations annually in lumpsum. From 02.09.1992 he had worked on deputation in the Trading Establishment keeping his lien in the KVIC as Assistant Director (Training). His services were continued beyond 01.09.1997. The order dated 04.09.1997 specifically mentioned that a decision was taken by the KVIC to continue the applicant in the post of Deputy Director in the Trading

Establishment. The order also says that on regular appointment as Deputy Director in Trading, he was transferred and posted to work as Manager, K.G. Bhavan, Lucknow. This order clearly shows that the applicant was taken as a regular employee of the Trading Establishment only from 02.09.1997. Even if the respondents' contention that his period of service in the Trading Establishment is not to be counted towards pension because the Trading Establishment is non-pensionable, the fact that the applicant was on deputation from 02.09.1992 to 01.09.1997 from the regular establishment of KVIC and his pensionary contributions were deposited by the Trading Establishment in the Non-Plan funds makes it amply clear that the period from 01.09.1992 to 01.09.1997 has to be counted towards eligible period of services for pension. The Applicant has taken the plea that his case should be covered under Standing Order No.1499 dated 17.07.1992. The relevant portions of the said Standing Order has been quoted at para 2(iii) of this order. However for clarity and additional emphasis, it is repeated here:

“Instructions were issued in the past under Standing order No.1407 dated 21-9-87 (Para 4) to the effect the candidates for appointment from regular establishment

to the Trading Establishment should be informed at the time of their appointment that their connection with the regular establishment would be severed by payment of whatever benefits admissible to them as per rules under regular establishment in respect of services rendered under regular establishment prior to their joining trading establishment. This means, an employee under the regular establishment, if selected under selection or direct recruitment quota for appointment against a post under Trading Operations, will be treated as fresh recruit under Trading Establishment and is required to obtain whatever benefits are admissible under the regular establishment as per rules before joining the Trading Establishment. It has been observed that this stipulation is creating considerable difficulty for recruitment of qualified and experienced hands under Trading Establishment for the reason that generally senior and qualified employees under regular establishment do not opt to go to Trading Establishment by foregoing their past services. This is because pensionary benefits are not admissible to employees under Trading Establishment.

2. *The issue was considered by the Commission at its meeting held on 26.05.1992 and the Commission has approved the following guidelines for appointment of employees working under regular establishment on selection/direct recruitment under Trading Operations:-*

- i) As far as possible, no employee under regular establishment should be selected for appointment under Trading Operations, as such appointments create administrative difficulties.*
- ii) If at all the Services Board/DSSC selects a person under regular establishment for a post under Trading Establishment, he should be treated as on deputation to the Trading Establishment for a period not exceeding five years and leave salary and pension contribution should be credited to the non-plan fund as per normal deputation terms. The employee may also be given an option to draw pay either under Trading Operations fixed under normal rules or draw pay at the rate admissible under the regular establishment plus deputation allowance as per the rules. It should be made clear to them that for pensionary benefits their substantive pay will only be taken into account not*

the pay drawn under Trading Establishment.

3. The above procedure is applicable from the date of issue of this order. However, a couple of employees who had opted during 1991 to 1992 to forgo their past service in order to come over to the trading operations may be given fresh options either to accept the revised procedure as per the present guidelines or to continue on the basis of the existing orders."

This Standing Order was passed after considering the various contingencies arising out of earlier Standing Orders. The said Standing Order clearly shows that for pensionary benefits the employees' substantive pay will only be taken into account and not the pay drawn under the Trading Establishment. In the present case, the substantive pay of the applicant was in the post held under the lien by him as Assistant Director Training in the regular establishment of KVIC. Irrespective of whether he was drawing the pay of the regular establishment plus deputation allowance or the pay under the Trading operations fixed under normal rules, his pay in his substantive post will apply for the purposes of pension as provided in the Standing Order No.1499 dated 17.07.1992.

12. To support his claim for pension for the period from 02.09.1997 to 31.12.2011, the Applicant has taken a plea that he was not asked

to exercise his option to revert to the regular Establishment. This plea has no merit because on the passing of the order dated 04.09.1997 wherein he was appointed on a regular basis as Deputy Director in Trading and continued to work in the Trading Establishment till his retirement in December 2011, he had accepted to continue in the Trading Establishment in a non-pensionable job. It was always open for him to opt to go back to the regular establishment any time during that period. Therefore, by deciding to remain in Trading Establishment he has forfeited his claim for eligibility for pension for the period from 02.09.1997 to 31.12.2011.

13. The Applicant will not be eligible for counting his service in the Schematic Establishment from 12.09.1983 to 19.12.1991. His reliance on the Standing Order No.1500 dated 28.08.1992 is misplaced. The said Standing order reads as follows:

“Representations are being received from may ex-employees of the Commission and employees of the Commission who are already in service requesting for counting of service rendered by them in the schematic establishment of the Commission prior to their coming over to the service under its regular establishment. The case of one of the employees in this category was considered by the Commission at its meeting held on 6/7.8.1992 and decided as follows:-

“The Commission approved the proposals to count the services rendered by X X X under schematic establishment of Cottage Match Industry from 1.3.1960 to 4.5.1962 for pensionary benefits on his retirement from the Commission's services.

2. The Commission also decided that similar benefits may be extended to other employees of the Commission who were appointed directly under the Board/Commission under schematic establishment but subsequently transferred without interruption to regular establishment and continued to be in regular establishment till retirement”.

2. In view of the above decision Heads of Departments in the case of staff and Adm-I Section in the case of officers may take note of the above decision and make necessary entries in the service records in respect of such persons who served under schematic establishment and transferred/appointed under regular establishment without interruption in service subsequently prior to the introduction of the pension scheme i.e. prior to 27.09.1984.”

It is obvious from the above that since the applicant did not continue in the regular establishment till his retirement, his services in the Schematic establishment will not be counted towards pensionary benefits.

14. The Applicant has relied upon the judgment of Hon'ble Delhi High Court in ***Smt. Mohini Devi Pandey (Supra)***. However, this case law is not applicable in his case since in ***Smt. Mohini Devi Pandey (supra)*** the petitioner's husband had put in 16 years of service in the regular establishment before being given a fresh appointment as UDC in the Trading

Establishment of KVIC.

15. In its 623rd meeting dated 26.03.2014, the KVIC had taken the following decision:

“1. Commission approved counting of past services rendered by Shri R.K. Chaturvedi Dy.Director(Retd.) in NSSO, Govt. of India, New Delhi from 27.07.1974 to 09.09.1983 by condoning two days break from 10.09.1983 to 11.09.1983 and service rendered in regular establishment of KVIC from 12.09.1983 to 01.09.1992 for pensionary benefits as represented by Shri R.K. Chaturvedi, Dy.Director who retired from the services of the commission on superannuation on 31.12.2011 under trading establishment.

2. Commission further approved counting of five years continuous service from 2.9.1992 to 1.9.1997 rendered by Shri R.K. Chaturvedi, Dy. Director(Retd.) in 'trading operations' on deputation basis for pensionary benefits.”

This order was subsequently rescinded by the Commissioner KVIC on the ground that contributing towards GPF while being in Trading Establishment will not entitle an employee towards pensionary benefits. The applicant has challenged the competence of CEO on the ground that he could not take decision for the Commission while working as CEO. A perusal of the records submitted by the respondents show that a decision was taken by the Government to authorize the CEO to take decisions as Commissioner on behalf of the KVIC. The Gazette Notification dated 13.05.2015 reads as follows:

“S.O.1280(E)- Consequent upon his appointment as Chief Executive Officer in Khadi & Village Industries Commission, Mumbai, Shri Arun Kumar Jha has taken over the charge of Chief Executive Officer, Khadi and Village Industries Commission with effect from 13th April, 2015 from Shri B.H. Anil Kumar, Joint Secretary, Micro, Small & Medium Enterprises, who was holding the additional charge. Central Government had established an authority in the name of Commissioner for Khadi & Village Industries to exercise all powers and to discharge the functions of Khadi & Village Industries Commission and Shri B.H. Anil Kumar was assigned the responsibilities of Commissioner for Khadi & Village Industries w.e.f. 8th December, 2014. Central Government now makes an order that Shri Arun Kumar Jha, Chief Executive Officer, Khadi & Village Industries Commission shall discharge the functions of Commissioner for Khadi & Village Industries in place of Shri B.H. Anil Kumar from the date of publication of this order in the gazette, till further order”.

16. The decision taken by the CEO was after the Gazette Notification, hence there is no illegality in the CEO reversing the decision of the Commission. After perusing the relevant records and examining the rationale of the decisions taken by the CEO, KVIC I hold the view that the CEO's decision to disallow the period of service from 12.09.1983 to 19.12.1991 and 01.09.1997 to 31.12.2011 for pensionary purposes is correct and proper since he has rightly taken into account the likely implication of the 26.03.2014 decision of the Commission on the KVIC in case of similarly placed employees. However, the applicant is entitled to count the deputation

period of 02.09.1992 to 01.09.1997 towards pensionable service since the order dated 04.09.1997 mentions that he was appointed on 'regular appointment' as a Deputy Director in the Trading Establishment. During the period of deputation the applicant had retained his lien as Assistant Director (Training) in the regular establishment of KVIC. His link with the direct establishment of KVIC got disconnected only from 02.09.1997 on his 'regular appointment' as Deputy Director in the Trading Establishment. Since by the impugned order the respondents accepted the applicant's right to pension for his service in NSSO from 27.07.1974 to 09.09.1983 and in KVIC in the post of Assistant Director (Training) from 20.12.1991 to 01.09.1992, the period of five years of deputation should also be added to the applicant's pensionable service and consequently he will be eligible for pension. The Standing Order No.1499 dated 17.07.1992 does not mention anything about the requirement of the employee going back to the regular establishment after the completion of 5 years period for eligibility for pension. This is in direct juxtaposition to para 3 of the earlier Standing order No.1407 dated 21.09.1987 which reads as follows:

“3(1) Benefits admissible under the Khadi & Village Industries Commission Employees (Pension) Regulations, 1984 may extended to such of the employees of the trading establishment of KVIC who had held substantive appointment (i.e. confirmed against permanent posts in the regular establishment) in the regular establishment prior to their joining the trading establishment and subsequently joined the trading establishment without break in service on or after 30.10.80 i.e the crucial date by the High Court of Bombay for granting pensionary benefits to the employees of the Commission.

2. The period of service in the trading establishment in respect of such of the employees who become eligible for pensionary benefits will be treated as on deputation.

3. The decision to extend the benefit to the employees coming under the category mentioned at (1) above is subject to the condition that they are taken back on the strength of the regular establishment i.e. they are reverted to their original post in the regular establishment.

4. The period of absence from the regular establishment should not exceed 5 years. In other words, the period of service under the trading establishment to be treated as on deputation should not exceed 5 years.

5. Employees who are at present under trading establishments covered by the decision at (1) above and desire to be reverted back to their original posts in regular establishment should submit their options to the respective Heads of Department in the enclosed proforma (Annexure A) within two months from the date of issue of this order. In case no such option is received within the stipulated period they will be deemed to have opted to continue under the trading establishment and will be governed by the benefits admissible under the trading establishment.”

17. Therefore, in the final analysis after adding the period of his deputation of five years in the Trading Establishment, the applicant will

be eligible for pension counting his pensionable service in three spells of (i) 27.07.1974 to 09.09.1983 (9 years 1 month and 13 days) in NSSO, (ii) 20.12.1991 to 01.09.1992 (8 months and 13 days) in KVIC as Assistant Director (Training) and (iii) 02.09.1992 to 01.09.1997 (5 years) in the Trading Establishment on Deputation.

18. In view of the above, the OA is ***partly allowed***. The Respondents are directed to calculate the applicant's pensionable service as 14 years, 9 months and 26 days and grant him pension from the date of his retirement with all consequential benefits. The Applicant will also be entitled to interest @ 9% p.a. w.e.f. his date of retirement till the actual date of disbursement. An order to this effect shall be passed by the respondents within twelve weeks from the date of receipt of this Tribunal's order. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

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