

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Dated: This the 24th day of December 2018

No. OA 330/414/2009

Present: **Hon'ble Mr.Gokul Chandra Pati, Administrative Member**
Hon'ble Mr.Rakesh Sagar Jain, Judicial Member

Kodai Ram, S/o Late Sri Munesar, R/o Village Balli Patti, PO –
Dudhaura, Tehsil & District Basti.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Industry & Supply, Department of Industry, New Delhi, Nirman Bhawan, 7th Floor, Maulana Azad Road, New Delhi.
2. Director, Small Industries Services institute, Branch Micro Small & Medium Enterprises Development Institute, 34 Industrial Estate Nunhai. Agra.
3. Director Branch micro Small Medium Enterprises Development Institute, 107 Industrial Estate Kalpi Road, Fazalganj, Kanpur.
4. The Director, Micro Small Medium Enterprises Training Centre, Kolkata, 111//112 BT Road, Kolkata.

.... Respondents.

For the applicant: Shri S.N.Yadav

For the respondents: Shri L.P.Tiwari

O R D E R

Per Mr.Gokul Chandra Pati, Administrative Member

The OA has been filed by the applicant with the prayer for following reliefs :

- a) issue a writ order or direction in the nature of mandamus directing the respondents to count his previous service from the date of regular appointment w.e.f. 16.9.1980 till the date of retirement being regular employee;
- b) issue a writ order or direction in the nature of mandamus directing the respondents to provide consequential benefit i.e. revision of pay scale and promotion similar to the old employees appointed along with the applicant;
- c) issue a writ order or direction in the nature of mandamus directing the respondents to pay the retiral benefits to the applicant;
- d) issue any such order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case;
- e) award the cost of petition in favour of applicant.

2. The brief facts of the case as stated in the OA are that the applicant was engaged on the post of Machine Operator as Casual Worker on Daily Wages basis w.e.f. 21.10.1969 at Kanpur in the office of Director Small Industries

Services Institute Branch Micro Small Medium Enterprises, Kanpur. He was transferred from Kanpur in the same capacity to the office of Director, Small Industries Service Institute (Extension Centre), Meerut vide order dated 18.6.1972.

3. Applications were invited by the Small industries Service Institute, Kanpur for regular post of Skilled Worker Grade I. It is stated in the OA that the applicant applied for the said post and vide letter dated 31.5.1979 (Annexure No. I to the OA) he was selected and appointed w.e.f. 16.9.1980 after being declared to be successful in the test.

4. A seniority list of Skilled Worker Grade II, Category B (Mistri) was prepared and the applicant was placed at Serial No. 5 in the seniority list (Annexure No. II to the OA). The services of the applicant was made permanent vide letter dated 30.10.1980.

5. As stated in the OA, the services of the applicant were terminated w.e.f. 30.11.1987 allegedly by a verbal order without any notice, without assigning any reason and any opportunity of hearing to the applicant. No termination order was served upon the applicant. Aggrieved, the applicant approached the Director, Small Industries Service Institute, Agra (respondent No.2), who vide letter dated 20.2.1985 (Annexure No. 3 to the OA) engaged him as Semi Skilled Worker Grade II (Helper) at Extension Centre, Meerut which is the same office from where the applicant was terminated.

6. The Extension Centre Meerut was closed w.e.f. 31.5.1991. Thereafter, all the employees except the applicant were adjusted at different place, but the applicant was declared surplus. However, later the applicant was adjusted on regular post of Helper Grade I in the office of Micro Small Medium Enterprises Testing Centre, Kolkata w.e.f. 27.7.1995. Thereafter, the applicant moved an application on 6.11.2007 for counting his previous service and for consequential benefits and this application was forwarded to the office of respondent No.2. It is stated in the OA that no decision in the matter has been taken by the respondents.

7. In the counter affidavit filed by the respondents, it is stated that the MSME Testing Centre – Kolkata examined the request of the applicant for counting of his previous services and after examination, MSMETC, Kolkata Office sent the detailed information to DC (MSME), New Delhi. Consequently DC (MSME), New Delhi, vide letter dated 14.12.2007 (Annexure No. CA-1 to the counter affidavit) informed that the request of the applicant for counting of past services prior to termination from service for the purpose of pension etc. in Central Government cannot be acceded to. It was also stated that the services of casual worker prior to regularization does not qualify for pension purpose and hence, the question of counting past services of casual worker does not arise.

8. Further, it has been stated in the counter that the services of the applicant were terminated w.e.f. 24.1.1984 consequent upon the order of Additional Munsif, who held his appointment to be illegal. He was again appointed as helper on 19.11.1991 and terminated w.e.f. 31.5.1992 vide order dated 8.5.1992 (Annexure No. CA-2 to the counter affidavit). In such a case, past service will not be counted. However, the applicant was again appointed to the post of Helper (Grade-I) on 27.7.1995 and posted at MSME Testing Centre, Kolkata, vide order dated 1.6.1995 (Annexure No. CA-3 to the counter affidavit) and in the said order dated 1.6.1995, it was made clear that the appointment of the applicant would be considered as fresh appointment and pay will be fixed under the normal rules. Hence, his earlier services could not be counted.

9. In the Rejoinder affidavit, the applicant has reiterated the contentions raised in the OA and has stated that he had no knowledge about the court order by which his appointment was held to be illegal and this order was never served upon him. The applicant has also filed supplementary affidavit broadly reiterating the contentions stated in the OA and the rejoinder.

10. Heard learned Counsel for the applicant, who reiterated the contentions made in the OA and submitted that the applicant was selected after a regular interview and appointed on 16.9.1980 but his service was terminated without any notice on 24.11.1984. Subsequently he was re-engaged on 22.2.1986 and

his service was terminated again on being surplus and re-appointed again w.e.f. 27.6.1995 vide order dated 1.6.1995. The applicant retired from the service on 31.12.2008. It was submitted that the applicant had made repeated representations before his retirement regarding counting past services for the purpose of pensionary benefit. Learned Counsel subsequently drew our attention to the letter dated 6.11.2007 of the Director (enclosed in Annexure A/4), in which it was pointed out that the terminal benefits to the applicant was not paid at the time of his termination or when he was discontinued after being declared as surplus. It was also pointed out that in the reply furnished by the respondents with reference to the query under RTI Act, annexed to the supplementary rejoinder affidavit filed on 28.8.2012, it was stated that no termination order from SISI Agra from the post of Skilled Worker Grade II was issued and no termination benefit was disbursed. Hence, he argued that there is a strong case for the applicant to count the previous service of the applicant.

11. Learned Counsel for the respondents, on the other hand, drew our attention to the contentions made in the counter affidavit (para 5) stating that his request for counting previous service was examined and vide letter dated 14.12.2007 the DC (MSME) had informed that the request of the applicant for counting past service for the purpose of pension etc. cannot be accepted. Copy of the order dated 14.12.2007 is enclosed at Annexure A-1 to the counter. He also mentioned that when the applicant was appointed as Helper on 27.7.1995 vide order dated 1.6.1995 (Annexure A-3), in which it was clearly mentioned that it was a fresh appointment. Hence the past services of the applicant cannot be counted.

12. The question to be decided in this OA is whether the applicant is entitled for counting of his past services as per the existing rules. It is an admitted fact that the services of the applicant were terminated from time to time and after a gap he was re-engaged. He was appointed on regular basis w.e.f. 27.6.1995 vide order dated 1.6.1995 which clearly stated that it was a fresh appointment. There is nothing on record to show that the termination order of the applicant has been challenged by the applicant after termination of his services or his

dis-engagement. The applicant remained silent over the matter and seems to have accepted this termination order except for submission of representations for counting of the past services. No specific rule or instruction of the Government of India has been furnished in support of such a claim of the applicant.

13. Learned Counsel for the applicant had referred to the judgment of Hon'ble Allahabad High Court (Lucknow Bench) in the case of **Chief Engineer, Irrigation Department -vs- Ram Prakash & Anr. [2008 (2) LBESR 751 9AII)(LB)]** in which the employee was engaged by the Chief Engineer as a Daily Wager and his service was subsequently terminated. The dispute in that case was about the termination of the services. The concerned employee has challenged the order passed by the Chief Engineer before the Labour Tribunal, which ordered that the termination was not legal. This order was challenged by the employer before the Hon'ble Allahabad High Court. In the instant OA there is nothing on record to show that the applicant had challenged his termination or disengagement order as and when his services were discontinued or terminated by the respondents. The relief sought in this OA is to count the previous services of the applicant from date of his initial appointment. Since no termination order has been challenged, the same had attained the finality. Even if the termination was not in accordance with law, the applicant had failed to challenge the said termination order in time as per provisions of law. Therefore then decision in the cited case will not be applicable to the present OA.

14. In view of the discussions above, we do not find adequate justifications furnished before us to justify any interference in the matter. Accordingly the OA being devoid of merit is dismissed. There will be no order as to costs.

(RAKESH SAGAR JAIN)
JUDICIAL MEMBER

(GOKUL CHANDRA PATI)
ADMINISTRATIVE MEMBER

I.Nath