

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 119 of 2025

Sri Samir Mukherjee

Vs.

Union of India & Ors.

For the Petitioner : Mr. Surya Prasad Chattopadhyay
Mr. Satyaranjan Kundu,
Mr. Arjun Samanta,
Ms. Trishtrya Mancherji.

For the Respondent Nos. 4 to 7 : Mr. Srinjoy Das,
Ms. Jui Jana,
Mr. Aritra Ghosh.

Judgment on : September 16, 2025

Madhuresh Prasad, J.:

1. The Writ Petitioner was the applicant before the Central Administrative Tribunal, Kolkata Bench (hereinafter referred to as the Tribunal in short), seeking a direction upon the respondents to treat the services rendered by him from 1986, till his retirement on 31.01.2021 for the purpose of pension under the Old-Pension-Scheme. The Tribunal disposed of the OA 1136 of 2018, filed by the petitioner on 08.04.2025 with direction to the respondents to consider the petitioner's claim of parity with Debasis Mukhopadhyay and to accord the benefits of pension to the petitioner, in the event it has been granted to Debasis

Mukhopadhyay, within a period of three months from the date of receipt of certified copy of the Tribunal's order, along with all consequential benefits.

2. Briefly stating, the facts of the present case are that the petitioner along with one Debasis Mukhopadhyay claimed to be working in a sponsored project as Field Studies Enumerator (Casual Employee) at Bankura Project in National Institute of Science and Technology and Development Studies (NISTADS), since 1986. His initial engagement was for field studies and as enumerators in the distant villages. The writ petitioner has been continuing in the Bankura Project, and after the sanction of the DRDA sponsored project in the year 1987-88, payments were made from the sponsored project funds, wages being enhanced periodically.
3. The writ petitioner was claiming absorption since he continued to work as a casual worker for a considerable period of time. The absorption was claimed under a scheme called "Casual Worker Absorption Scheme, 1990 (1990 Scheme for short), notified by a circular dated 04.10.1990 by the Council of Scientific & Industrial Research (CSIR). He along with another applicant, namely Debasis Mukhopadhyay, approached the Tribunal for such reliefs in OA No. 442 of 2000. The OA was disposed of on 01.09.2000 directing the respondents to consider their claim for grant of benefits under the Scheme within 4 months. The Tribunal also issued direction on the Miscellaneous Application filed therein, that due remuneration be paid without any further delay.
4. Alleging non-compliance of the order passed in OA No. 442 of 2000, a contempt proceeding was initiated (CPC 129 of 2000). In the contempt proceedings the authorities informed the Tribunal that upon due consideration of the applicant's claim, they were eligible for absorption in the Organization (CSIR). Their

absorption was to be as per normal procedure for recruitment prescribed for the post, which included qualifying in the trade test. The direction regarding payment of due remuneration was also complied.

5. The learned Advocate representing the applicants in the contempt proceedings raised an entitlement to get temporary status for the period prior to his absorption. But since the direction in OA 442 of 2000 was limited to reliefs of absorption the Tribunal did not entertain such claim, and the contempt proceedings bearing CPC 129 of 2000 was dropped vide order dated 13.05.2004.
6. The petitioner thereafter was subjected to written examination and typewriting test, and on recommendation of the Selection Committee his appointment was approved as Assistant Grade-III in the Pay Scale of Rs. 3050-75-3950-80-4590. The offer letter of appointment was issued on 05.02.2008, pursuant to which he joined at National Institute of Science, Technology and Development Studies (NISTADS). Thereafter he was relieved from NISTADS on 31.08. 2009, and he joined the post of Assistant (G) Grade-III at Central Glass and Ceramic Research Institute, Kolkata (CG and CRI). The petitioner was promoted to Assistant (G) Grade II on 02.01.2012; and thereafter to Assistant (G) Grade-I in the year 2017.
7. Nearly 8 years after the petitioner's appointment, he made representations dated 07.06.2017, 04.07.2016 and 07.08.2017 claiming notional benefits for the period he served in the Bankura project, prior to his appointment by way of absorption. Petitioner wanted this period to be treated as qualifying service, for extending him pensionary benefits under the Old-Pension-Scheme. He claimed parity with one Samarendra Mondal. The petitioner's claim however was rejected by a communication dated 09.12.2017, on the ground that the petitioner was never conferred temporary status which, as contemplated in Office Memorandum

issued by the Department of Personnel and Training Government of India, dated 26.02.2017, was a prerequisite for counting the period as qualifying service, and for extending pensionary benefits. This memorandum was endorsed by the CSIR letter dated 31.05.2016.

8. The petitioner approached the Tribunal again by filing an OA No. 1136 of 2018. It is pertinent to notice here that the Office Memorandum dated 19.12.2017 issued by the CSIR (CG and CRI) declining his representation for grant of pensionary benefits was not challenged by the petitioner in the OA 1136 of 2018.
9. The Tribunal, after considering the stand of the parties and the material on record was of the view that the 1990 Scheme under which the petitioner claimed benefits, would not entitle him to grant of any pensionary benefits. The tribunal found that the petitioner accepted the terms of appointment contained in his Appointment Letter dated 05.08.2008, which in unequivocal terms was a new appointment. He accepted the new appointment on the terms and conditions contained in the Appointment Letter, which clearly stipulated that the appointment was being made under the new Pension Scheme. He raised no objection to such terms and conditions contained in the appointment letter. The Tribunal further relied upon Clause (E) of the 1990 Scheme to hold that petitioner would not be entitled to benefits under the Old-Pension-Scheme. The Tribunal also took notice of the fact that the petitioner had retired on 30.01.2021. Considering these factors the Tribunal did not find any case made out for issuing direction in favour of the petitioner. In so far as the parity claimed with one Samarendra Mondal the Tribunal found that Samarendra Mondal was granted temporary status under the 1995 Scheme, whereas the petitioner was

never granted temporary status. It further found that Samarendra Mondal was appointed in NISTADS.

10. From perusal of the impugned order dated 08.04.2025 passed by the Tribunal in OA 1136 of 2018 it appears that the petitioner also raised an issue that Debasis Mukhapadhyay, petitioner's co-applicant in the earlier OA No 442 of 2000, who was similarly situated as the petitioner was accorded pensionary benefits. He thus claimed the same benefits on the ground of parity and fairness. Since there was no material in this regard before the Tribunal, it directed the authorities to examine such claim of the petitioner and if pensionary benefits had been granted to Debasis Mukhapadhyay, then the same be accorded to the petitioner with all consequential benefits, within three months from the date of communication of the Tribunal's order.
11. Learned Advocate for the writ petitioner has submitted that the petitioner was making representation since 2016 for grant of benefit of Old Pension Scheme. The Tribunal has, therefore, wrongly concluded that the petitioner had accepted appointment dated 05.02.2008 under the New Pension Scheme. He has also relied on OM No. 14 (5)/86/TA/112 dated 05.12.1989, issued by the Government of India under Rule 14 of the CCS Pension Rules, dispensing with allocation of leave salary and pension contribution between Central and State Governments and between two State Governments.
12. The learned Advocate has relied upon one decision of the Apex Court in the case of ***Union of India an Ors v. Mohan Pal & Ors.*** reported in ***(2002) 4 SCC 573.*** This judgment deals with two issues :

- i. *Whether the conferment of temporary status under 1993 Scheme was contemplated to be extended to the casual worker as and when they completed one year's continuous service.*
- ii. *Whether it was an one-time-programme to grant temporary status on fulfilment of the requisite period of casual work.*

13. The other issues which fell for consideration before the apex Court in the case Mohan Pal (supra) was whether after confirmation on temporary status such employee can be removed merely on whims and fancies of the employer, even if there is sufficient work and other casual labourers are still to be employed by the employer carrying out the work. The Apex Court was also considering an issue whether the employees who acquired the temporary "status," could be removed only if there is serious misconduct or violation of service rules. These issues do not arise for consideration in the present case and therefore, we have no hesitation in concluding that decision in the case of **Mohan Pal (supra)** has no application in the present case.

14. During hearing of the present writ petition the petitioner's Advocate has also relied upon Clause 7 of the Office Memorandum dated 26.02.2016 (Annexures E) to the reply filed by the respondents before the Tribunal. The petitioner was never conferred temporary status. Therefore, the OM dated 26.02.2016 is not applicable to the petitioner. The petitioner, therefore, is not entitled to any benefit under DOPT OM dated 26.02.2016.

15. In so far as the findings of the Tribunal based on the Appointment Letter dated 05.02.2008, there is no iota of doubt that the petitioner's appointment was with a clear stipulation that the appointment was being made under the New Pension Scheme. It is also a fact that the appointment with such terms was accepted without any objection whatsoever by the petitioner in the year 2008, he has

raised claim for grant of pensionary benefits for the first time about 8 years thereafter in the year 2016. Rejection of his claim for grant of pensionary benefits by OM dated 19.12.2017, therefore, does not suffer from any infirmity whatsoever.

16. The petitioner having accepted his appointment dated 05.02.2008 with an explicit condition that such appointment was under the new pension scheme, without any demur, was estopped and precluded from claiming the benefit of old pension scheme. The petitioner's claim for benefits under the old pension scheme, eight years after the appointment dated 05.02.2008 is barred by delay and laches, as well as the principles of acquiescence, waiver and estoppel. This Court's view is fortified by settled legal position as per decision of the Apex Court in the case of ***State of Bihar and Others vs. Baliram Singh and Others*** reported in ***(2018) 18 SCC 46***, paragraph 18 of which reads:

"18. In the present case, however, the respondents have neither challenged the termination order after closure of the Non-Formal Education Scheme with effect from 1-4-2001 nor the policy dated 20-5-2005 under which they have been appointed or the appointment letter dated 16-3-2007. Even the appointment letter dated 16-3-2007 unambiguously predicates that the appointment was a fresh appointment and the past services would be reckoned only for the purpose of grant of pension and nothing more. Indisputably, the respondents acted upon such terms and conditions of appointment without any demurrer. They chose to file the subject writ petition only in the year 2013, when the cause of action first arose on 1-4-2001, then on 20-5-2005 and once again, on 16-3-2007. Unless the respondents are to be reinstated in their previous post (held prior to 1-4-2001), the question of awarding back wages would not arise at all. The relief of back wages is and can be linked only to the order of reinstatement. It cannot be awarded in isolation or, for that matter, during the period when the respondents were not in employment at all."

17. We further find that petitioner's representation for pensionary benefits was rejected by the authorities by the OM dated 19.12.2017, which the petitioner has

not challenged in any forum, not even before the Tribunal in OA No. 1136 of 2018, order of which is impugned in the present writ petition.

18. We, therefore, do not find any infirmity in the decision of the Tribunal impugned in the present proceedings. In so far as the claim for grant of pensionary benefits based on parity with Sri Debasis Muphapadhyay, we find that Sri Debasis Mukhopadhyay was not made a party in OA 1136 of 2018 filed by the writ petitioner. We also find that no case was made out in the averments made in the OA 1136 of 2018 based on which the petitioner could claim parity with Debasis Mukhpadyay. In view of such deficiency in the averments made in the OA, it was not possible for the Tribunal to proceed to consider such claim only on the basis of submissions, as the respondent authorities had no occasion to deal with such claim in their reply filed before the Tribunal. The Tribunal, however, in paragraph 8.2 of the impugned order has directed:

"8.2. However, decision shall be taken by the respondents on the basis of the records of the case of Shri Debasis Mukhopadhyay. In the event, he has been accorded benefits of pension, the respondents shall implement the same in the case of present applicant also within a period of three months from the date of receipt of a certified copy of this order with all consequential benefits qua fixation of pay/pension and arrears after adjustment/conversion thereto. "

19. In view of consideration above, we find no reason to interfere with the decision of the Tribunal in exercise of discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India.

20. In view of the consideration and discussion as above we find no merit in the present writ petition. The writ petition is accordingly dismissed,

21. There will be no order as to costs.

22. Parties will be at liberty to get urgent certified copy of this judgment and order upon fulfillment of all necessary formalities and payment of requisite court fees.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)