

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 9/2001

New Delhi, this 18th day of March, 2002

Hon'ble Shri S.R. Adige, Vice-Chairman(A)
Hon'ble Shri Kuldip Singh, Member(J)

G.P.S. Sirohi
RZF 1/377, Road No.2
Mahavir Enclave, New Delhi .. Applicant

(By Shri L.R. Khatana, Advocate)

versus

Union of India, through

1. Secretary
Deptt. of Secondary & Higher Education
Min. of Human Resource Development
Shastri Bhavan, New Delhi
2. Secretary
Deptt. of Pension & Pensioners Welfare
North Block, New Delhi .. Respondents

(By Shri Rajeev Bansal, Advocate)

ORDER

Shri S.R. Adige

Applicant impugns respondents' order dated 28.8.2000 (Ann. A-1) and seeks a direction to respondents to count his past service rendered by him in Govt. of UP prior to his joining Army service, together with the service rendered by him in Respondent No.1 department for the purpose of retiral benefits.

2. Heard.

3. Admittedly, applicant rendered service in Govt. of UP from 14.7.60 to 10.4.63. Thereupon, consequent to Chinese aggression he joined in Indian Army from 10.4.63 to 30.4.91. He retired from Indian Army on 30.4.91 and it is not denied that he is drawing pension for his Army service. Thereupon in response to an advertisement

issued by Respondent No. 1 on 3.5.91 for the post of Assistant Education Officer, through UPSC, applicant applied and got selected. He joined that post on 11.2.92 and retired on superannuation on 31.5.2001.

4. Applicant falls short of the mandatory qualifying period of 10 years post-army civilian service, which would entitle him pensionary benefits, by a few months, and if the period of his pre-army service is also counted there is no doubt that the shortfall will be more than made up. Hence this prayer to count his pre-army civilian service towards the qualifying service for pensionary benefits.

5. Applicant had made the same prayer for counting of his pre-army service several times earlier also which was rejected by respondents' orders dated 2.8.94 (Ann. A/4) and again on 16.1.95 (page 17 of OA). Indeed respondents have taken the plea that apart from lack of merit, the OA is also hit by limitation.

6. Applicant's counsel has contended that respondents consideration of his subsequent representation and rejection by impugned order dated 28.8.2000, gives him a fresh cause of action. Reliance in this connection has been placed on para 7 of 1990(1) ATJ 74.


7. Even if it is assumed that respondents order dated 28.8.2000 gives applicant a fresh cause of action, no rule or instruction has been shown to us by applicant's counsel to give applicant an enforceable legal right to compel respondents to add the civilian service rendered by him in 1960-63 in UP, to the service rendered by him in


Respondent No.1 Department in 1992-2001, so as to give him the mandatory qualifying years of service entitling him to pensionary/retiral benefits.

8. During hearing applicant's counsel contended that even if no rules/instructions were presently in existence to cover such cases, eventualities of this nature were bound to occur and should be covered by respondents through administrative instructions.

9. It is no doubt open to respondents to issue administrative instructions to cover such eventualities in future if they are so disposed to do, but that does not give applicant an enforceable legal right to compel respondents to issue such administrative instructions, and neither does he have an enforceable legal right to compel respondents to grant him the relief he claims in the present OA, in the absence of any rule/instructions to cover the same.

10. Under the circumstances, the OA warrants no interference. Subject to what has been stated in para 9 above it is dismissed. No costs.


(Kuldip Singh)
Member(J)


(S.R. Adige)
Vice-Chairman(A)

/gtv/