

Central Administrative Tribunal  
Principal Bench

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O.A.No.2029/93

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 30th day of July, 1999

Dr.G.D.Goel  
Reader and Head of the Mathematics Dept.  
Army Cadet College Wingh, I.M.A.,  
Dehradun - 248 004. .... Applicant

(By Shri G.D.Gupta, Advocate)

Vs.

1. Union of India through  
the Secretary  
Government of India  
Ministry of Defence  
South Block  
New Delhi.
2. Director General of Military Training  
Sena Bhawan  
New Delhi.
3. UPSC, through  
its Chairman  
Dholpur House  
Shajahan Road  
New Delhi.
4. Dr. R.N.Rai,  
127, Indra Nagar Colony  
Dehra Dun. .... Respondents

(By Shri R.P.Agarwal, Advocate)

O R D E R

Hon'ble Shri R.K.Ahooja, Member(A)

The facts of the case giving rise to the present OA may be briefly stated. The applicant was appointed as a Lecturer in Maths in Army Cadet College, Pune on 15.7.1970. He was promoted as Reader in Maths on 24.10.1981. The pay scales of civilian academic staff at the National Defence Academy were revised by an order dated 20.1.1983. The new pay scales were made admissible subject to the fulfilment of the qualifications and experience prescribed by the UGC for similar posts in the

Universities/Colleges. As the applicant did not fulfil the requisite qualification, not being in possession of a doctorate at that time, he was not granted the UGC pay scales. By subsequent orders dated 6.4.1985 and 30.6.1987 the condition for grant of UGC scale was relaxed and the revised pay scales were made admissible w.e.f. 1.1.1983 subject to the recommendations of the screening committee. The applicant's case was however not approved by the screening committee as he had been given an adverse entry in his ACR of 1986. Subsequently however the revised pay scale of pay was granted to the applicant w.e.f. 6.9.1990. The applicant thereupon aggrieved by the respondents decision not to grant the UGC pay scale w.e.f. 1.1.1983 filed an OA No.832/91. This OA was decided on 5.5.1995 with a direction that the Screening Committee shall consider the case of the applicant without reference to any adverse remarks in the ACR of 1986; In other words, the Committee so convened shall take into account the service records of the applicant only upto 1.1.1983. In compliance of these directions, the case of the applicant was reviewed and by an order dated 25.10.1995 the applicant was granted UGC pay scales w.e.f. 1.1.1983. The pay and allowances were also paid to him. In the meantime, the post of the Principal at the Army Cadet College, Indian Military Academy, Dehradun (It had been shifted from Pune to Dehradun) fell vacant w.e.f. 1.10.1984. According to these Recruitment Rules promulgated vide SRO 78/66 Readers with five years service in that grade were eligible for consideration for promotion to the post of Principal. As no Reader had the requisite experience, the post could not be filled up. Action for filling up of the post was thereafter postponed as it was intended

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to amend the recruitment rules, following the revision of pay scales to provide for the direct recruitment. These amended rules came into force in 1988. The DPC however took place in December, 1992, after a decision was taken that the post having fallen vacant in 1984 it was to be filled up in accordance with SRO-78/66 and not by the 1988 amended recruitment rules.

2. The case of the applicant in brief is that as per Government instructions the DPC was required to prepare the panels for promotion yearwise but this has not been done. In 1984 when the post was vacant no one was eligible and the same situation prevailed in 1985. The applicant completed the requisite qualifying service on 24.10.1986. Another Reader, Shri Rai, Respondent No.4 also became eligible in April, 1987. As the applicant was only person eligible in 1986, he had to be considered by himself on the basis of his record upto December, 1985 as the ACRs were being maintained as per calender year. His grievance is that the DPC held in 1987 considered Shri Rai as well and also took into account the ACRs upto 1986 and recommended Shri Rai even though he was able to officiate for only three days before his superannuation. It is on this ground that the applicant has sought a direction that his case may be reviewed for promotion in 1986.

3. Having gone through the pleadings and after hearing the counsel on both sides, we find that the applicant has a valid case. The applicant had been promoted as Reader w.e.f. 24.10.1981. He was also on the basis of a decision of this Tribunal in OA No.832/91 declared ~~he was also~~ entitled to UGC grade. Thus he completed his

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five years qualifying service as Reader on 24.10.1986. As pointed out by Shri G.D.Gupta, learned counsel for the applicant, the instructions to the DPC in regard to the preparation of yearwise panel laid down that "the eligibility list for the past years should be drawn up as on 31st December of the year for which the panel is drawn". On 31.12.1986 the applicant had the requisite eligibility having completed five years of service as Reader on 24.10.1986. He was thus entitled to be considered for the post of Principal during the year 1986. As submitted by the respondents, the DPC prepared panels yearwise from 1987 when Shri Rai also became eligible. As a result of that consideration of the applicant's name in 1987, his adverse entry for the year 1986 also came to be taken into account by the DPC. If the panel had been prepared for 1986, these adverse entries would not have been in reckoning nor the applicant would have <sup>had or</sup> to compete with Shri Rai. In view of this position, the legitimate interest of the applicant suffered.

4. We may also notice the points which could ~~be~~ militate against the applicant. The preparation of panels with DPCs are on the assumption of anticipated vacancies during the course of one year and it is on that basis the cut off date for eligibility is fixed keeping in view the system of writing the ACRs. In the the present cases it was a single vacancy, which was not anticipated but in fact existed right from 1984. There was no question of preparation of a panel but only of selection of one candidate, who would be immediately appointed. In that event, the eligibility could be with reference to the date of holding the DPC. It could also

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be said that it was open to the respondents to take a decision to fill up the post as and when they deemed it proper. However, that is not the case of the respondents. They say that they asked the DPC to make year wise panels and panels <sup>way</sup> prepared for 1987. Apparently the DPC did not appreciate the full facts regarding the eligibility of the applicant and did not give its recommendations for the year 1986. Since the DPC was in any case asked to make the recommendations with retrospective effect, it could as well be deemed to have met ~~on~~ 24.10.1986. Therefore, the case of the applicant is in no way adversely affected because of these points.

5. In the result the OA is allowed. The respondents are directed to convene a review DPC to consider the case of the applicant on the basis that he was eligible to be considered for the post of Principal w.e.f.24.10.1986. This will be done within a period of the four months from the date of receipt of a copy of this order. No order as to costs.

R.K.Ahooja  
(R.K.Ahooja)  
Member(A)  
  
/rao/

V.Rajagopala Reddy  
(V.RAJAGOPALA REDDY)  
VICE-CHAIRMAN(J)