

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.888/93

New Delhi, this the 16th day of September, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)
Hon'ble Dr.A.Vedavalli, Member(J)

M.P. Sharma,
S/o Shri D.P. Sharma,
R/o Block No.19/994,
Lodhi Colony,
New Delhi.

...Applicant

(By Advocate Shri George Paracken)

Versus

1. Union of India through
the Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi.
 2. The Director General,
National Cadet Corps (NCC)
West Block No.IV, R.K. Puram,
New Delhi.
 3. The Dy. Director General,
N.C.C. Directorate, Delhi,
Old Secretariat,
Delhi-110054.
- ...Respondents

(By Advocate -None)

ORDER (ORAL)

By Mr. N. Sahu, Member(Admnv) -

None was present for the respondents on 7.8.98 when the case was first called out for hearing. None is present for the respondents today also when the case was fixed for the second time. Under the circumstances after hearing Shri George Paracken, learned counsel for the applicant and going through the averments on record, we dispose of this O.A. as under.

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2. In this O.A. the applicant seeks a direction to quash the impugned order dated 5.11.92 and also a direction for implementing the terms and conditions of service applicable to the applicant in the letter dated 22.7.69. He seeks a direction not to discharge the applicant in view of Rule 22 of the N.C.C. Rules, 1948. The admitted facts are - The applicant was given commission as NCC Officer on 27.1.67. He did his courses of training and study and was promoted as First Officer w.e.f. 27.1.75. After completing 45 years he applied for extension of two years w.e.f. 1.7.86 to 30.6.88 which was granted. The second extension was also granted upto 30.6.90. Even according to the respondents at page 2, paragraph D. of the counter, Rule 22 was revised and the relinquishment age was increased by five years. Admittedly, he could serve upto 30.6.93 without further extension. The applicant was informed by Respondent No.3 vide No.2/Bty/Y/204/92/320 dated 13.7.92 that the extension of his service tenure as a First Officer had been effected from 1st July 1992 to 20th June, 1994 under Rule 22 of the NCC Act. At paragraph E. the respondents state as an answer to the above as under:

"Erroneously a letter was issued by OC 2 Delhi Arty Bty NCC on 13 July 92 granting him the extension. This mistake realisedand the same letter was cancelled vide letter dated 18th Sep 92."

Paragraph F. of the counter states:

"The appointment of I/Officer M.P. Sharma as caretaker has been regularised till 27 Nov 92, since there was no suitable teacher for the job available. However, II/Officer K.K.





Yadav was posted to the school on 28 Nov 92 and on recommendation of the Principal he was asked to take over the charge."

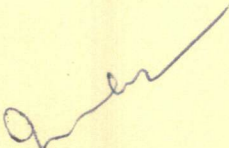
The learned counsel for the applicant states that the Rules were amended on 6.12.88 and the Rule 22 reads as under:

"22. Period of appointment -- subject to the provisions of Part VII of these Rules, a person commissioned in the National Cadet Corps shall hold that commission as an officer in that Corps until he reaches 50 years of age, when he shall be discharged from the Corps;

Provided that if in the opinion of the authority granting him the commission, such person continues to be physically fit and it is necessary or expedient so to do such authority may, extend the period of commission, of such person, who has attained the age of 50 years, upto the age of 55 years/

There were also changes in the rule position before and after.

3. The applicant's counsel states further that his initial appointment was governed by SRO 331 dated 17.12.62 by which the words "52 years" were substituted ^{for} the words "45 years" in Rule 22 of the NCC Rules, 1948. The contention of the applicant is that his service conditions are governed by these rules and his date of birth being 1.7.41 he could go upto 30.6.93 under SRO mentioned above which governed his appointment. He was appointed in the year 1967 when this Rule was in force. The applicant fulfilled all the conditions laid down in the said rules. Though the NCC had changed the rules from time to time, his initial appointment was governed by SRO 331 dated 17.12.62.





4. We notice one more aspect. The respondents themselves stated that they have given the extension by a letter dated 13.7.92 and this extension was withdrawn in September, 1992. The law is very clear that the terms and conditions of appointment as it existed when the first appointment was issued would govern the conditions of service. Secondly, rightly or wrongly the respondents have given him an extension by their letter dated 13.7.92 extending the period upto 30.6.94. The cancellation of this letter admittedly was without a show cause notice to the applicant. This cancellation, therefore, has to be declared illegal on the basis of the following decisions of the Supreme Court:

- (1) State of Orissa vs. Dr. (Miss) Binapani Devi - (1967) 2 SCR 625.
- (2) A.K. Kraipack Vs. Union of India - (1969) 2 SCC 262.
- (3) Bhagwan Shukla vs. Union of India and Others - 1994 SCC (L&S) 1320.

4. In this view of the matter the withdrawal of order granting extension from 1.7.92 to 30.8.94 was peremptory without affording an opportunity of being heard to the applicant, particularly, when his original appointment enabled him to continue in service upto 30.6.93. For the

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period from the date of relinquishment till 30.6.93 upto which date he could legally claim to serve in accordance with SRO cited above and as the termination was done for no fault of the applicant and without any show cause notice, we direct that the applicant shall be paid, within a period of 16 weeks from the date of receipt of a copy of this order, the additional remuneration that he would be entitled to get, if he had continued in the post upto 30.6.93. We firmly hold that after 30.6.93 it was entirely a matter of discretion of the respondents whether to extend the service or not and as no enforceable right existed, no direction can be given after 30.6.93.

5. The O.A. is disposed of. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

N. Sahu

(N. Sahu)
Member(Admnv)

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