

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.122 of 2005.

Allahabad, this the 16/11 day of November, 2007.

Hon'ble Dr. K.B.S. Rajan, Member-J
Hon'ble Mr. K.S. Menon, Member-A

Prabhoo Nath Yadav, S/o Late Pancham Yadav,
Aged about 57 years, working as Assistant Instruction
in the Office of respondent No.2 and temporary residing
at Vill. & Post-Kawali, Dehradoon.

.....Applicant.

(By Advocate : Shri O.P.Gupta

Versus

1. Union of India through Secretary, Ministry of Textile, Govt. of India, New Delhi.
2. Assistant Director, Office of Development Commissioner (Handicraft), Carpet Weaving Training Service Centre 469/3, Vijay Park Bistar, Dehradoon.
3. The Director (Handicraft) Office of Development Commissioner (Handicraft), Central Region, Kendriya Bhawan, 7th Floor, Aligang, Sector-H, Lucknow, 226024.

...Respondents.

(By Advocate :Shri S.P. Sharma)

O R D E R

By Dr. K.B.S. Rajan, Member-J :

The applicant was initially appointed as Asst. Craftsman in December, 1979. He was absent from duty from 25-11-1988 to 30-04-1990 on medical grounds, but when he attempted to resume duties, he was not permitted. Hence, OA 898 of 1990 was filed which was partly allowed on 12-05-1994 with a direction for reinstatement and to consider regularization of the services, but without any back wages . Accordingly, reinstatement was made on 02-12-1996 but services were regularized w.e.f. 8-8-1994. This delayed regularization resulted in the applicant's filing OA No. 1115/2002, which was disposed of with a direction to the respondents to consider and decide

the representation of the applicant filed against seniority. Accordingly, date of regularization of the service of the applicant was advanced to 3-10-1988 vide order dated 25th February, 2004 at Annexure A-4. However, period from 25-11-1988 to 30-04-1990 was to be treated as EOL (without medical certificate) and from 01-05-1990 to 7-8-94 as leave without allowances. Applicant was afforded the first ACP benefits w.e.f. 17-07-2003 vide order dated 6th December, 2004, while those who joined with him were afforded the said benefits from 9-8-99 itself. Representation dated 22-12-2004 did not yield any fruitful result. Hence this O.A. for annual increment from 01-10-1988 to 30-09-1995 and ACP benefits from 9-08-99 instead of from 17-12-2003.

2. Respondents have contested the OA, who have justified the action taken and according to them, regularization was correctly made, since the Tribunal had not granted any back wages.

3. Counsel for the applicant argued that notwithstanding the fact that the applicant was away from duty from 1988 to 1995, as he is a regular employee, he is entitled to notional increments which have not been made available to him. Again, in so far as grant of leave is concerned, the respondents are required to first adjust the period of absence by grant of leave of any kind, available with the application and it is only the remaining period of absence, that would be covered under EOL to the extent the period is supported by medical certificate and the rest without any allowances. He relied upon the relevant rules vide Rule 26, 27 and 32 of the CCS (Leave) Rules.

4. Arguments were heard and documents perused. Annual increment is admissible in accordance with the provisions contained in FR 26. While calculating the period of one year for increment,

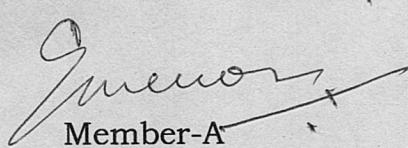
period of absence without leave is reduced vide Government of India Instructions No. 10 below Rule 26 giving a set of examples (orders dated 27-01-1968, 11-12-1971 and 4-11-1972) and as such claim for increment is inadmissible. As regards ACP, here again, it has to be seen whether the applicant had served for 12 years to earn the first ACP. In other words, ACP would be admissible after the applicant has earned 12 increments. Hence, when his juniors or those joined simultaneously with the applicants were afforded ACP w.e.f. 9-8-99 the applicant's date of ACP had to be deferred corresponding to the period of his absence from duty. Thus, the same too is not admissible.

5. One more aspect to be considered is whether the respondents were right in regularizing the entire period of absence by grant only of extra-ordinary leave. The applicant had joined the service in 1979 and his absence was in 1988. Perhaps there would have been some earned leave and half pay leave at his credit. If these were first adjusted and the remaining period covered by grant of extraordinary leave, to that extent, his increment date would be advanced and the period of service covered by grant of Earned and Half Pay leave counted for ACP purposes. The claim of the applicants in this OA though limited to the grant of increment and ACP without any reference to the adjustment of leave available at his credit, in the interest of justice, and as there is a close link between the grant of leave with pay and increments/calculation of 12 years service for working out ACP, coupled with the fact that Rule 32 of the CCS (Leave) Rules provide for such adjustment before resorting to grant of extraordinary leave, the department has to undertake this exercise.

6. In view of the above, the OA is disposed of with the following directions:-

- (a) The authorities shall ascertain the extent of leave (of all kinds) available at the credit of the applicant as of 01-10-1988.
- (b) The leave so available would be adjusted against the period of absence from 1988 to 1994.
- (c) The grant of increment shall accordingly be advanced.
- (d) The salary due would be worked out for the period of leave.
- (e) The period of 12 years service would also be accordingly advanced and his ACP benefits recalculated.
- (f) In view of the advancement of the ACP, his pay shall also be worked out and difference in pay due and drawn calculated.
- (g) The amount of leave encashment at the time of superannuation shall be adjusted against the amount due vide (d) plus (f) and the balance, if any, paid/recovered.
- (h) The pay last drawn on the basis of the Advancement of ACP would be ascertained and terminal benefits worked out accordingly.
- (i) The above drill be conducted only when there be substantial period of earned/half pay leave available (i.e. of 180 days and above) as otherwise, the entire exercise would not commensurate with the benefits available to the applicant.

7. With the above Direction, the OA is disposed of. No cost.



Member-A



Member-J