

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 680 of 1993

Allahabad this the 9th day of March 1998

Hon'ble Mr. D.S. Baweja, Member (A)

Umesh Chandra, aged about 47 years, S/o Late Sukumar Chandra R/o 301, Type III, I.I. Campus, Kanpur, previously employed as Civilian Glider Instructor/Civilian Gazetted Officer, P.A. NO. 27728, National Cadet Corps, presently employed as Senior Pilot Instructor, Indian Institute of Technology, Kanpur.

Applicant.

By Advocate Sri N.K. Nair

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Director General, National Cadet Corps, R.K. Puram West Block, New Delhi.
3. Chief Controller of Defence Accounts(Pensions), Draupadi Ghat, Allahabad.
4. Accounts Officer(Pensions) Office of the C.D.A.(P), Allahabad.

Respondents.

By Advocate Sri Amit Sthalekar

O R D E R

By Hon'ble Mr. D.S. Baweja, A.M.

The applicant worked as Gliding Instructor in the National Cadet Corps (for short N.C.C.) under

the Ministry of Defence, Government of India from 23.2.1970 to 17.1.1980. He applied through proper channel for the post of Junior Pilot Instructor in the Indian Institute of Technology (for short I.I.T.) Kanpur, a central autonomous body. He was selected and joined I.I.T., Kanpur on 18.1.1980 after obtaining 'no objection' certificate and tendering resignation as a technical requirement. The main case of the applicant is that as per the extant rules, he is entitled for counting of his service rendered under the Central Government for the purpose of pension under I.I.T. Kanpur. The issue raised through this O.A. filed on 26.4.93 relates to verification of qualifying service of the applicant under Government of India for pensionary benefits and transfer of pro-rata pension and death-cum-retirement gratuity from the Central Government to I.I.T. Kanpur for the purpose of counting of the past services towards pension and other retiral benefits of the applicant under I.I.T., Kanpur. The applicant has brought on record the details of making representations in this connection as well as the documents to show that the matter is under dealing with the concerned authorities. However, on not getting any favourable response, the applicant has filed the present O.A.

2. The respondents have filed the counter-reply. The respondents have admitted the facts with regard to the service of the applicant under the Ministry of Defence and joining I.I.T., Kanpur from 18.1.1980 after obtaining 'no objection' certificate. The respondents also admit that since I.I.T., Kanpur is an autonomous body, the applicant is entitled of the benefit of the past service. The respondents also make an averment that necessary action in this case has/-

been taken and the necessary pension payment order has been issued and amount of Rs.18045/- has been already paid to I.I.T., Kanpur.

3. The applicant has filed the rejoinder-affidavit confirming the action taken by the respondents. The applicant has also brought on record the office order dated 06.12.1993 at R.A.-1 issued by the I.I.T. Kanpur allowing the benefit of the past service rendered under the Central Government from 23.2.1970 to 16.1.1980. This order also provides that the applicant joined the Institute on 18.1.1980 and the break in service on 17.1.1980 has been treated as joining time and, therefore, condoned with the stipulation that this period of 1 day shall not count towards qualifying service. The applicant has brought out that he was relieved on 17.1.1980 in the afternoon and joined I.I.T., Kanpur on 18.1.1980 and, therefore, the break in service. The applicant submits that only grievance ~~is~~ now left ^{is} with regard to counting of 17.1.1980 as a part of qualifying service. The applicant filed an amendment application subsequently as brought out in the next para seeking the relief of counting 17.1.80 as a day for qualifying service.

4. During the pendency of the O.A., the respondents decided to allow all the Gliding Instructors, scale of Rs.700-1300 instead of Rs.650-960 from 01.1.73 in pursuance of the order of Tribunal. This decision covers the case of the applicant also. The applicant filed amendment application bringing this fact on record and the subsequent development regarding fixation of pay of the applicant in the higher scale

as well as the calculation of the contribution for pro-rata pension and death-cum-retirement gratuity to be done on the higher scale instead of the old scale which had been earlier paid to the I.I.T., Kanpur. This amendment application was allowed.

5. The respondents have filed the objection to the amendment application. The respondents have submitted that the proposal for grant of the higher scale could not be processed as the option required to be made, had been submitted late by the applicant. As soon as, the option ^{was} submitted by the applicant on 21.3.96, the proposal for fixation of the ^{pay of the} applicant with the higher scale had been sent to the competent authority for sanction. However, the competent authority has raised some objections and the matter is under re-examination and the necessary order shall be passed at the earliest.

6. I have heard the learned counsel for the applicant Sri N.K. Nair and Sri A. Sthalekar, learned counsel for the respondents. The material on record has been ^{also} carefully considered.

7. From the rival averments detailed above, the only controversy to be resolved ^{is} with regard to the counting of date of 17.1.1980 as a qualifying service. The applicant has submitted that he was relieved on 17.1.1980 in the afternoon and this has been supported by the documentary evidence at R.A.-2. The respondents have admitted this fact of the applicant being relieved on 17.1.1980. The respondents have not explained as to why I.I.T., Kanpur had been advised the qualifying

service upto 16.1.1980. Further the respondents have tried to explain that as per the office order of I.I.T. dated 06.12.93, the break in service for 17.1.1980 has been condoned and the period should qualify for the purpose of pension. The stand taken by the respondents is not understood in the face of admitted fact that the applicant was relieved on 17.1.1980. The applicant has joined on 18.1.1980 and as such there is no break in service. Keeping this position in view, the applicant is entitled for the benefit of service for the day of 17.1.1980. Necessary action shall be taken within the period of 3 months from the date of this order, by the respondents to advice I.I.T. Kanpur to count 17.1.1980 as a period of qualifying service.

8. The other issue involved is with respect to the fixation of pay of the applicant in the higher scale and calculation of contribution for pro-rata pension and death-cum-retirement gratuity on the basis of the pay fixed in the higher scale. The respondents themselves have submitted that the proposal is under process and the order will be passed shortly. The learned counsel for the applicant during the arguments submitted that purpose of the applicant will be served incase the direction is given to the respondents to finalise the case with regard to fixation of pay and payment of the revised contribution to I.I.T., Kanpur within a stipulated period. The learned counsel for the respondents fairly conceded with this prayer and stated that the respondents may be allowed 6 months of time to take the necessary action. Keeping ^{this} in view, it is directed that the respondents shall pass the final order with regard to pay fixation and payment of contribution of pro-rata pension ^{and} death-cum-retirement gratuity to I.I.T., Kanpur within a period of six

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months from the date of receipt of this order.

9. The application is disposed of with the
above
directions as detailed in para 7 and 8 of this order.
No order as to costs.

A. B. Singh
Member (A)

/M.M./