

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD  
BENCH ALLAHABAD**

Allahabad, this the 25<sup>th</sup> day of January, 2012

Hon'ble Mr. D.C. Lakha, Member-A  
Hon'ble Mr. Sanjeev Kaushik, Member-J

**Original Application No.1455 of 2006  
(U/s 19 of Administrative Tribunal Act, 1985)**

Prabhu Nath Yadav, Aged about 48 years,  
S/o Shri Ram Raj Yadav, R/o Bishun Purwa,  
Muskan Bandwali Gali, Deoria Road, Kunara  
Ghat, Gorakhpur, Present working as Post Graduate  
Teacher (Chemistry), Kendriya Vidyalaya No.1  
AFS Gorakhpur.

..... *Applicant.*

By Advocate : *Shri Rakesh Verma*

**V E R S U S**

1. Union of India through Secretary, Ministry of Human Resources & Development, Kendriya Vidyalaya Sangathan, New Delhi-110 001.
2. The Vice-Chairman, Ministry of Human Resources & Developments, Kendriya Vidyalaya Sangathan, New Delhi-110 001.
3. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110 016.
4. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional office, Kankar Bagh, Patna.
5. The Principal, Kendriya Vidyalaya No.1 AFS Gorakhpur.

..... *Respondents*

By Advocate : *Shri N.P. Singh*

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**ORDER**

**(Delivered by Mr. Sanjeev Kaushik, Member-J)**

1. The instant original application is directed against the order dated 03.11.2006 passed by respondent no.3 whereby his request to count his past service for the purpose of pension and other pensionary benefits has been rejected (Annexure A-1).
  
2. The facts, in brief, are that the applicant initially joined Government Higher Secondary School, Namsai, Arunachal Pradesh as Junior Teacher on 03.02.1982. He applied for the post Graduate Teacher (Chemistry) in the Kendriya Vidyalaya Sangathan (for 'short KVS') through proper channel. His application was forwarded by the competent authority to KVS vide their letter dated 20.01.1987. On being selected as Post Graduate Teacher (Chemistry), the applicant submitted technical resignation to unable him to accept the new assignment. The applicant was relieved on 29.10.1988 to join KVS. He joined on 31.12.1988. On 08.03.1990 the applicant submitted a representation to the respondents to count his past service of Junior Teacher for pension, pensionary benefits and his pay be also protected. In this representation the applicant has also requested to make entry of Date of Birth of his wife in service book (Annexure A-2). His request was accepted, his pay was protected and fixed at Rs.1650 P.M. (Annexure A-3). On 19.09.1991 the

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respondents wrote a letter to Government of Arnuachal Pradesh. In response to that the Govt. of Arnuachal Pradesh issued certificates on 13.12.1991 and 05.03.1991. When the claim of the applicant for counting his past service for pension and other pensionary benefits has not considered then the applicant made a detailed representation, copy of which has been appended as Annexure A-7. When applicant did not hear anything from the respondents on his request, then he sought information under Right to Information Act. In reply to that respondent department informed the applicant that his request was turned down vide order dated 3.11.2006 as he is did not give option within one year of his appointment (Annexure A-1). Hence the present original application.

3. Pursuant to notice, the respondents filed Counter affidavit and resisted the claim of the applicant mainly on the ground that since the applicant did not submit any application for counting his past service within one year from the date of appointment, therefore, his request was turned down. In para 11 of the counter affidavit the respondents have placed reliance upon a letter dated 06.09.2007 issued by Dy. Commissioner (Admn.) Kendriya Vidyalaya Sangthan, New Delhi that it is mandatory for the employee to exercise option for pay protection/counting of his past service

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(Annexure CA-1). Since he made representation beyond one year, therefore, the benefit of counting his past service cannot be extended. Other admissible benefits have been given to the applicant.

4. The applicant has also filed rejoinder affidavit, along with that he filed letter dated 17/20.10.2006 written by Assistant Commissioner KVS to Principal KVS Gorakhpur for considering the case of the applicant for counting past service. He has also annexed (RA-III) letter dated 30.4.2007 written by respondent (Assistant Commissioner) to the Director Public Instruction (E) Govt. of Arunachal Pradesh showing their intention for counting the past services of the applicant provided pro-rata pensionary benefits of the applicant are transferred in favour of the KVS.

5. We have heard Sri R. Verma learned counsel for the applicant and Sri N.P. Singh, learned counsel representing the KVS. Sri Verma learned counsel for the applicant vehemently argued that the impugned order rejecting his claim for counting past service rendered with the govt. of Arunachal Pradesh is illegal, arbitrary and violative of Article 14 of the constitution of India. He urged that applicant applied in KVS through proper channel and after being selected he tendered technical resignation, after its

acceptance by the State of Arnuachal Pradesh, he joined the KVS. There was no break in service. He further urged that immediately after joining the KVS, the applicant submitted representation on 8.3.1990 requesting the respondents for entry of his previous service. Therefore there was no delay on the part of the applicant. He further argued that the instructions relied upon by the respondents dated 20.10.1990 is not applicable in the case of the applicant as the same is applicable for those who have not opted earlier, whereas the applicant had already opted. On the other hand Sri Singh, counsel for the respondents argued that because the applicant did not give option within the stipulated period after joining KVS, therefore, his claim has rightly been rejected by the impugned order. He placed reliance upon an order passed by Ernakulum Bench of this Tribunal in O.A. No. 248 of 2004 decided on 18.01.2007.

6. We have considered the rival submissions of the learned counsel for respective parties. It is settled law of the land that the pension is not a bounty but a fundamental right granted to the government servant as ruled by the Apex court in ***D.S. Nakara and others Vs U.O.I. and Others, 1983 SCC (L&S) 45.*** The option methodology available under rule 18 of CCS (Pension) Rules 1972, which undisputedly has been adopted by the KVS to allow his employees the pension

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as well as post retiral benefits. A conscious decision was also taken on 17/20.4.2006 by the respondents for counting his past service. In continuation of that a request was made to the Govt. of Arnuachal Pradesh on 13.4.2007 (Annexure RA-3) to transfer his (Applicant) pro-rata pension contribution in favour of KVS, which was acceded by the Govt. of Arnuachal Pradesh as vide order dated 18.9.2007, approval for granting pro-rata pension as admissible under Rule 37 of C.C.S. (Pension) Rule 1972 has been accorded (Annexure RA-4). Once the respondents have taken a conscious decision for counting his past service then they cannot be allowed to reject the same on the ground of limitation. Even viewed from another angle Rule 14(6) of C.C.S. (Pension) Rules mandates that service rendered with the Central/State Government is to be counted for the purpose of pension. The same reads as under:-

*"(6)Counting of temporary service under the state/Central Governments-*

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3. *The benefit may be allowed to the Government servants in categories (1) and (2) above. Where an employee in category(2) is required for administrative reasons, for satisfying a technical requirement, to tender resignation from the temporary post held by him before joining the new appointment, a certificate to the effect that such resignation had been tendered for administrative reasons and/or to satisfy a technical requirement, to join, with proper permission, the new posts, may be issued by the authority accepting the resignation. A record of this certificate may also be made in his service book under proper attestation to enable him to get this benefit at the time of retirement. Government servant in Category (3) will obviously, not be entitled to count their previous service for pension."*

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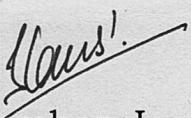
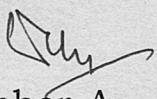
In view of the above, the impugned order is liable to be set aside.

7. The judgment cited by the learned counsel for the respondents in the case of V. Gopalan (Supra) the same is not applicable with the facts and circumstances of the case as the said original application was dismissed on the ground of delay as well as on the grounds that the applicant therein has not made any request for counting his past service and has not submitted any document to this effect, whereas in the case in hand the applicant moved an application on 8.3.1990 for counting his past service. The similar controversy has been considered by the Principal Bench in the case of Ram Prasad Gupta Vs. Union of Indian and Others passed in OA No.1799 of 2010 decided n 18.11.2010 wherein considering the controversy of KVS the Tribunal has held that past service is to be counted for pensionary benefits.

8. In view of the above rule position and the judicial pronouncements on this subject we are of the considered view, that the original application is liable to be succeed. Accordingly, the impugned order dated 3.11.2006 (Annexure A-1) is set aside. In the result, the OA is allowed. The respondents are directed to count the erstwhile service rendered by the applicant with the Govt. of Arnuachal

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Pradesh between 03.02.1982 to 28.12.1988 and recalculate the pensionary benefits with arrears from the date the applicant has retired from service on superannuation. This shall be done within a period of three months from the date of receipt of a certified copy of this order. No Costs.

  
Member-J  
Member-A

/ns/

O.A. 1455/2006

20.03.2012

Hon'ble Mr. Justice S. C. Sharma, Acting Chairman  
Hon'ble Ms. Jayati Chandra, Member (A)

We have heard Shri N.P. Singh, learned counsel for the respondents on the application moved on behalf of applicant for correction in the order passed in O.A. No. 1455/2006 on 25.1.2012. It has been alleged that the order by the Tribunal was passed on 25.1.2012 and not on 25.1.2011. It is a clerical mistake apparent on the face of record. Instead of listing this correction application before a Bench comprising of Hon. Shri D.C. Lakha, Member (A) and Hon. Shri . Sanjeev Kaushik, Member (J), this correction can be made by this Bench also. Although there is illness slip of applicant's Advocate Shri Rakesh Verma, but as the mistake is apparent on face of record, hence it deserves to be allowed. Application for correction M.A. 491/2012 is allowed and necessary correction has been incorporated.

Certified copy if issued be also correct on production of the same in copying section or fresh copy be issued as per rules.

*T.C.*  
Member (A) *Shri Jayati Chandra*  
Acting Chairman

s.a.