

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH, LUCKNOW

Original Application No. 232 of 1991

Capt. B.D. Khulbey Applicant

Versus

The Union of India through Ministry of
Defence, New Delhi and others.
. Respondents

Hon'ble Mr. S.N. Prasad, Member (I)

The applicant has approached this tribunal under section 19 of the Administrative Tribunals Act, 1985 with the prayer that the applicant be declared to be entitled to get all financial benefits w.e.f. 22.2.1978 to 18.4.1984 i.e. honorarium, promotion, service seniority etc. as the order dated 26.5.1978 passed by the respondent no. 1 was not cancelled by any competent Court of law, nor it was withdrawn by the N.C.C. authorities and the respondents be further directed to pay the amount for which the applicant is found entitled together with ^{interest 5% ~} @ 18% per annum.

2. Briefly, stated the facts of this case, inter-alia, are that the applicant was appointed as Instructor in the Industrial Training Institute, Sri Nagar, Garhwal w.e.f. 10.11.1963 and then he was transferred to Industrial Training Institute, Rampur in the month of September, 1965. It has ^{~ further ~} been stated that in the month of August, 1970 a new Coy. under the Command of 61 ^{Brigade} ~~Brigade~~ N.C.C., Moradabad was started for the first time in the Industrial Training Institute Rampur; and after requirement of N.C.C. Officer from the aforesaid Moradabad ~~Brigade~~ ^{Bn.}, the Principal, Industrial

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Training Institute, Rampur invited applications from his Instructional Staff for the post of N.C.C. Officers; and as being a trained N.C.C. cadet, the applicant applied for the same and he was selected by N.C.C. Authorities, and started his work and thereafter ~~he~~^{he} was allotted personal No. NCC 13602.; and in the year 1975 the applicant completed Refresher course from Officer's Training School, N.C.C., Kamptee, Nagpur and promoted as Lieutenant in the N.C.C. It has further been stated that there is provision in National Cadet Corps Act that a N.C.C. Officer can not be transferred anywhere and if his transfer is essential, he may be posted where N.C.C. is functioning, so that the service of the N.C.C. Officer may be utilised. The applicant was transferred from Industrial Training Institute, Rampur to Industrial Training Institute, Rae Bareilly, where N.C.C. Unit was functioning and the post of N.C.C. Officer was lying vacant since 1970 and at that time Sri K.N. Tewari, respondent no. 7 was working as care taker (Not Commissioned Officer) in N.C.C. Industrial Training Institute, Rae Bareilly. An order was passed by the respondent no. 4 on 26.5.78 that the charge of Coy. be given to the applicant with effect from 1.6.78 and II Lt. K.M. Tewari should be placed on supernumery strength for a period of one year w.e.f. 1.6.1978 to 31.5.1979. A writ petition was filed in the High Court by the respondent no. 7 numbered as 1393 of 1978 (K.N. Tewari Vs. Union of India and others) against the N.C.C. authorities and the

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applicant on the ground that the applicant is not on the permanent Teaching Staff of the Industrial Training Institute, Rae Bareilly, and ~~that~~ he belongs ^{to} ~~from~~ the Advance Vocational Training System of Industrial Training Institute, Rae Bareilly, who imparted training to the labourers of the factories and not the students as such the order dated 26.5.78 passed by the respondent no. 4 is without jurisdiction and illegal. It has been further stated that the aforesaid writ petition No. 1393 of 78 was listed on hearing on 31.5.88, but the same was dismissed in default of respondent no. 7 and no restoration was filed till date while the respondent no. 7 had full information about the dismissal of the case and as such the case of the respondent no. 7 was not decided on merits and stay order was vacated automatically and the order dt. 26.5.78 passed by the respondent no. 4 still existed and not quashed or modified by any competent court or authority. It has further been stated that respondent no. 5 sent a letter dt. 30.9.80 to the Principal, Industrial Training Institute, Rae Bareilly informing him for raising two platoons in the Industrial Training Institute, Rae Bareilly, and its copy was also forwarded to the applicant for taking over charge of the newly raised 2nd platoon, and as such the applicant took charge of the 2nd platoon newly raised on 1.10.80 and since then the applicant is working as N.C.C. Officer and after taking over the charge of the 2nd platoon, NCC Industrial Training Institute, Rae-Bareilly the applicant started his work and enrolled 100 cadets and had started their training, but the honorarium for the period from 1.10.80 to 31.3.81 and from 1.3.82 to 31.3.84 @ Rs. 80/- per month, total amounting to Rs. 2,480/- was not paid by the respondent no. 5 to the

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applicant despite repeated request and demand through the registered notice, hence the applicant has approached this tribunal.

3. The respondents have resisted the claim of the applicant with the contentions inter-alia, that the applicant was commissioned in N.C.C. as Lieutenant w.e.f. 11.7.1971. However, the applicant had relinquished his commission on 22.2.1977 and was regranted commission w.e.f. 19.4.1984. The applicant did not report at Battalion Head Quarter till 19.3.1977 though he had reported to his institution and the respondent no. 7 Captain K.N. Tewari had already been commissioned as Second Lieutenant on 7.8.1977. The writ petition filed by Shri K.N. Tewari (respondent no. 7) as referred to in the application, was dismissed for default on 31.5.1988. However, the order against which Captain K.N. Tewari filed writ petition was already modified through letter dated 17.6.1978. The applicant took charge as a caretaker as he was not regranted commission upto 19.4.1984 because the applicant has relinquished his commission on 22.2.1977; and the applicant applied for re-grant of commission on Form No. III. (vide Annexure C-1 to the counter-reply). The applicant did not accept honorarium w.e.f. 1.10.1980 as he claimed it from February, 1978 and onwards depending on vacation of stay order passed in the writ petition of Captain K.N. Tewari, and the applicant accepted honorarium from 1.4.1981 and onwards upto February, 1982 when it was stopped as his commission was not regranted till then. The applicant was not paid honorarium upto 1.4.1984, since he was re-commissioned w.e.f. 19.4.1984 (vide Annexure C-2 to the counter-reply).

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It has further been contended that the applicant was not given charge in 1978 by respondent no. 6 stating therein that the applicant was not in regular teaching staff and thereafter due to the stay order granted by the High Court in the aforesaid writ petition filed by Captain K.N. Tewari. The applicant was designated as Care Taker uptill his re-grant of commission; and the applicant was care-taker from 1.10.1980 to 18.4.1984 as he was re-granted commission on 19.4. 1984 and as such the applicant as per rules can be given benefit only during the period when the applicant held his commission and for Care taker allowance from 1.10.1980 upto 31.3.1984 except for 11 months which has been already paid. However, the applicant has refused to accept Care-taker allowance.

4. I have heard the learned counsel for the parties and have thoroughly gone through the records of the case.

5. This is significant to point out that from the perusal of Annexure C-1 and C-2 to the counter-reply and from the scrutiny of all the entire evidence and material on records, it is apparent that the applicant was discharged from N.C.C. w.e.f. 22.2.1977 and was re-granted commission w.e.f. 19.4.1984. This is also important to point out that a perusal of Annexure 15 to the application ^{~ and of other papers on record ~} shows that the applicant was appointed as Care-taker w.e.f. 1.10.1980.

6. This is also important to make mention of this fact that in para 33 of the application of the applicant, it has interalia been mentioned by the applicant himself that due to stay order granted by the High

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Court, the applicant could not work.

7. This is also worth while making mention of this fact that in para 24 of the counter-reply filed by the respondents, it has been mentioned that the applicant as per rules can be given benefits only during the period when the applicant held his commission and for care-taker allowance from 1.10.80 upto 31.3.1984 except ^{for} ^{he} for 11 months which has already been paid, and a perusal of para 24 of the counter-reply of the respondents further reveals that the applicant has refused to accept Care-taker allowance. I have carefully perused ~~the~~ all the papers filed by the applicant which are Annexure-1 to 15, and have also perused all the papers filed by the respondents.

8. Thus, from the foregoing discussions and from the scrutiny of the entire material and evidence on record and keeping in view the circumstances of the case, it becomes obvious that the applicant was discharged from N.C.C. with effect from 22.2.1977 and was re-granted commission with effect from 19.4.1984; and he was appointed caretaker with effect from 1.10.1980 and as such the applicant is entitled only for caretaker allowance as per rules for the period from 1.10.1980 to 31.3.1981 and from 1.3.82 to 31.3.1984 and is found to be not entitled for any other relief.

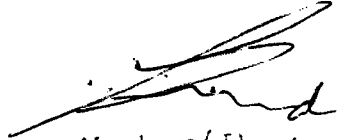
9. The application of the applicant is allowed as above. The respondents no. 1 to 5 are directed to

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make payment of the care-taker allowance to the applicant, as per rules, for the above period, within two months from the date of the receipt of the copy of this judgement. No order as to costs.


Member (J) 15.10.92

Lucknow Dated 15.10.1992

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