

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO: 866/96

DATE OF DECISION: 19/7/2000

Shri Dasrath Anandi Prasad Yadav

Applicant.

Shri R.C.Raviani

**Advocate for
Applicant.**

Versus

Union of India & 3 Ors.

Respondents.

Shri R.K.Shetty

**Advocate for
Respondents.**

CORAM:

Hon'ble Shri B.S.Jai Parameswar, Member(J)
Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

} No

**(B.N.BAHADUR) ,
MEMBER(A)**

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION: 866/96
DATED THE 19TH DAY OF JULY, 2000

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI B.N. BAHADUR, MEMBER (A)

Shri Dashrath Anandi Prasad Yadav,
Groundman, T.No. GM/1079,
National Defence Academy,
KHADAKWASALA, PUNE - 411 023.

Residing at: House No. 36,
38, Kailash Nagar,
PIMPRI COLONY, PUNE - 411 017.

... Applicant

By Advocate Shri R.C. Ravlani

V/s.

1. Union of India,
Through: The Secretary,
Ministry of Defence,
South Block,
New Delhi-110 011.
2. The Deputy Director General,
Military Farms,
AHQ, OMG's BRANCH,
West Block No. III
R.K. PURAM,
NEW DELHI-110 066.
3. The Director Military Farms,
HQ, Southern Command,
KHADKI, PUNE-411 003.
4. The Officer-Incharge,
Military Farm,
SECUNDERABAD: 11 (Andhra)
5. The Commanding Officer,
HQ, National Defence Academy,
NDA, KHADAKWASLA, PUNE-411 023.

... Respondents.

By Advocate Shri R.K. Shetty for Respondents.



...2.

(ORDER) (ORAL)

Per Shri B.N.Bahadur, Member(A)

This is an application made by Shri Dashrath Anandi Prasad Yadav seeking the relief from this Tribunal as follows:-

1. declare, that, the applicant is entitled for the protection of his pay, drawn by him, on the last occasion, immediately prior to the date of absence.
2. direct the Respondents to refix the pay of the applicant, consequent to 1.above.
3. direct the Respondents, to pay the consequential benefits, i.e.arrears of pay and allowances, as admissible,
4. direct the Respondents to pay the interest on the arrears, payable.
5. pass any other orders, deemed necessary and proper in the interest of justice.

2. We have heard Learned Counsel for the Applicant Shri R.C.Raviani, who argued the case in detail, as also Learned Counsel for Respondents, Shri R.K.Shetty. We have also seen all the papers in the case specially the order passed by this Tribunal in OA-47/89 on 12/4/91, a copy of which has been Annexed as A-6.

3. The facts of this case important are that the applicant is admittedly on unauthorised absence from 7/4/1981 to 17/7/1991. He has served the respondents previously from 7/2/1960 to 6/4/1981. Also that he rejoined on 18/7/1991 and has subsequently superannuated.



...3.
1.

4. Considering the facts and the prayers in the background of the decision taken in OA-47/89 by this Tribunal, it is clear that only two points now remain for determination before us. All other points urged by Applicant and prayers made are clearly barred by principles of res-judicata.

5. The two points that come before us for determination are, first, Whether the Applicant can claim protection of his pay at the stage on which he left on 7/4/1981 when he was reinstated on 18/7/1991. The fact is that on his rejoining on 18/7/1991, he was fixed at minimum of the scale. The Learned Counsel for respondents has argued that the Application in this regard is barred by limitation. It is indeed true that the Applicant has come up nearly 5 years after the cause of action arose. The argument made by learned counsel, Shri Ravlani was that he had represented and only in 1993 vide letter at Annexure A-1 was his claim rejected. This does not appear to be a valid argument since it was open to the applicant to come up before the Tribunal six months after the cause of action arose, even if his representation was not replied to. We may therefore conclude that this prayer is hit by limitation. On a preliminary reading of the order in OA-47/89, we do however feel that there was some ground for re-considering his salary at the level at which he left. But in view of the case of the applicant ^{twice} being barred by limitation, we are not inclined to give any direction or order in this regard. It will be open to the respondents to re-consider the matter if they so decide, as per rules.

[Signature]

6. In regard to the second point regarding counting of service, it is clear that the counting of service for the period from 1960-1981 will have to be decided upon in terms of the Rule. The only point decided upon earlier by this Tribunal is that the period from 1981 to 1991 shall not be counted. Now Rule-27 of CCS Pension Rules is the relevant rule and arguments were addressed before us with reference to this rule on both sides. The normal position as per this Rule is that interruption in service entails forfeiture of past service. However, certain exceptions are also laid down therein. It is also stated under Rule-27(2) as follows:-

(2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute retrospectively the period of absence without leave as extraordinary leave.

7. Thus, in the context of this rule, it is for the Respondents to consider the facts and *2* circumstances of the case of Applicant and take the decision considering the long period of service rendered by applicant. Since we are not in a position to give directions on either of these points, in terms of the relief sought, and since we feel that in terms of the rules and in the interest of justice, it would be appropriate for respondents to reconsider the case of the applicant as per rules, We hereby provide liberty to the applicant to make a representation to the respondents on this account.

8. In view of the discussion above and the facts and circumstances of the case, this OA is disposed of with the following directions/orders.

:5:

- (a) The applicant is at liberty to make a representation on the two counts discussed above to the respondents within a period of six weeks from the date of receipt of copy of this order.
- (b) The respondents shall consider this representation in accordance with law and rule and take a decision thereon within a period of three months from the date of receipt of representation. The respondents shall inform the applicant of the decision taken in writing. There will be no orders as to costs.



(B.N. BAHADUR)
MEMBER (A)



(B.S. JAI PARAMESWAR)
MEMBER (J)

abp