

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Friday the 26th day of September, 2003

Coram: Hon'ble Shri S.G.Deshmukh - Member (J)
Hon'ble Shri S.P.Arya - Member (A)

O.A.880 of 1999

Harendranath Dakua,
Reader,
National Defence Academy,
Khadakwasla, Pune
R/o No.D-3/95,
National Defence Academy,
Khadakwasla, Pune.
(By Advocate Shri S.V.Marne)

- Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
South Block,
New Delhi -110 011.
2. The Commandant,
National Defence Academy,
Khadakwasla,
Pune 411 023.
3. Shri J.K.Bhagwat,
Reader,
National Defence Academy,
Khadakwasla, Pune.
4. Dr.V.C.Mishra,
Reader,
National Defence Academy,
Khadakwasla, Pune.
5. Dr.R.L.Kothari,
Reader,
National Defence Academy,
Khadakwasla, Pune.
6. Dr.S.Dey,
Reader (Retd.),
D/63, Kendriya Vihar
Near Kaikhali Post Office,
Calcutta.
7. Shri S.P.Shattar,
Reader,
National Defence Academy,
Khadakwasla, Pune.
8. Dr.A.B.Rao,
Reader,
National Defence Academy,
Khadakwasla, Pune.
(By Advocate Shri R.R.Shetty) - For Respondents 1 & 2
(By Advocate Ms.N.Gohad
for Shri S.P.Saxena) - For Respondents 5 & 8

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O R D E R

By Hon'ble Shri S.P.Arya, Member (A) -

The applicant by this OA is seeking for counting five years' past service rendered by him for the purpose of his placement in the higher grade. His application for counting this period was rejected vide order dated 4.8.1999. He has therefore sought for quashing and setting aside the order of 4.8.1999 and for direction to the respondents for counting his previous service rendered by him prior to joining National Defence Academy (in short 'NDA') on the grounds that the benefit of counting of past service has been given to other private respondents from 3 to 8 and not granting him this benefit to him is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. Alternatively he has sought for the relief of quashing the orders for counting of past service in respect of respondents 3 to 8 and placing him in the senior scale and Reader's grade w.e.f. 1.1.1986 and 3.10.1989 respectively.

2. We have heard the learned counsel for the applicant and counsel for the respondent and perused record on the file.

3. The grievance of the applicant is that his past services have not been counted for placing him in the Senior Scale as per guidelines issued by University Grants Commission (in short 'UGC') vide their letter dated 27.11.1990. The relevant portion of the guidelines reads as follows -

"1. Previous service without any break as a Lecturer or equivalent in a university, college, national lab. or other scientific organisations (CSIR, ICAR, DRDO, UGC

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etc.) and as a UGC Research Scientist should be counted for placement of lecturers in Senior Scale/Selection grade provided that:-

(a) The post was in an equivalent grade/scale of pay as the post of a Lecturer;

(b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;

(c) the Lecturers concerned possessed the minimum qualifications prescribed by UGC for appointment as Lecturers;

(d) the post was filled in accordance with the prescribed selection procedure as laid down by the university/State Government.

(e) the appointment was not ad-hoc or in a leave vacancy of less than one year duration."

4. The counsel for the applicant has argued that the applicant has been denied the benefit of counting his service of almost five years on the grounds that he was not having the equivalent grade to that of the post of Lecturer, his services were not without break and appointment was ad-hoc⁴ ~~whereas~~ ⁴respondent no.5 was working in stop-gap arrangement, respondent no.3 was having a break of about 3 months and respondent no.4 who was working on ad-hoc basis have been given this benefit. He contends that he ought to have been given the benefit as he was similarly placed.

5. The respondents have contended that the applicant did not satisfy the required eligibility criteria for counting of the

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previous service of Lecturer in Acharya BN Seal College, Cooch Behar, West Bengal from 3.12.1974 to 2.1.1978. There was break in service after every six/nine months. His services as Extra Assistant Director, (Hydromet) in the Central Flood Forecasting Organisation from 4.1.1978 to 21.1.1980 was in the scale of Rs.650 -1200/-[~], the break in service after every six/nine months at six times and the scale of Rs.650 - 1200/- is not disputed by the applicant.

6. The Screening Committee was constituted for guarding against the arbitrariness in giving the benefit of past service for placing the Lecturers in the Senior Scale has gone into the details of past services in view of the guidelines of UGC dated 27.11.1990. A copy of the Screening Committee report is on file. This Committee scrutinised the cases of applicant and respondents and found as follows —

Respondent no.3 - worked as Lecturer from 15.6.1969 to 28.6.1979 in a permanent capacity. He had to give a notice on retirement for joining as Lecturer in NDA. The Ministry of Defence issued the orders of his appointment with inordinate delay. There was a break in his service for about three months which was beyond the control of individual. This break of about three months was accordingly condoned.

Respondent no.4 - while working as a senior Teacher in a Government School at Port Blair^{he} was appointed on a Group "A" Gazetted post of Lecturer in Government College, Port Blair from

1.10.1977. One of the terms of his appointment was that 'it was on deputation on 'ad-hoc basis' for a minimum period of one year in the first instance which could be extended on year to year basis on mutual consent'. Subsequently, he was sent on deputation as Lecturer to Government College, Daman w.e.f. 7.9.1979 till 15.12.1981. His services w.e.f. 1.10.1977 to 15.12.1981 was without break.

Respondent no.5 - worked as Assistant Professor (Rs.700 - 1600) from 11.8.1978 to 9.4.1980, Lecturer (Rs.650-1200) from 10.4.1980 to 24.7.1981, Assistant Professor (Rs.700 - 1600) from 25.7.1981 to 9.11.1982 and Assistant Professor (Rs.700 - 1600) from 10.11.1982 to 30.4.1983 on a stop-gap arrangement without break.

Respondent no.6 - worked in ACC Wing, Pune and Dehradun from 17.5.1970 to 3.6.1979 as a Lecturer in the scale of Rs.650 - 1200 which was upgraded on 20.1.1983 as Rs.700 -1600/-.

Respondent no.7 - worked as Lecturer in Government College, Port Blair w.e.f. 20.10.1973 to 31.6.1978 in the scale of Rs.700-1600/-. He joined Government Polytechnic, Panaji on 24.6.1976 in the scale of Rs.700-1300/-. His pay was also revised to Rs.700-1600/- w.e.f. 20.1.1983.

Respondent no.8 - was a Lecturer in Government College, Polytechnic, Panaji w.e.f. 2.12.1977 to 16.8.1983 in the scale

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of Rs.700 - 1300/- . When he joined the NDA, the scale of pay of NDA Lecturers was also Rs.700-1300/- . This was revised to Rs.700-1600/- w.e.f. 20.1.1983.

7. The Screening Committee considered the case of the applicant in great detail in its meeting of 22.7.1994 and 20.2.1998 and found that his appointment during 3.12.1974 to 2/1/1978 was ad-hoc, with breaks and was for a period of less than one year duration and not the scale of Lecturer i.e. Rs.700-1300/- . His case did not satisfy the guidelines of UGC. Applicant was also advised to have the break in service condoned by the appropriate authority in the Government of West Bengal and to produce necessary certificate for the consideration of the screening committee but he failed to do so. His case was forwarded for consideration and to give special dispensation, if such discretionary powers are available with Ministry of Defence and also keeping in view the special dispensation, if done would establish a precedent which would have implications for future cases of similar nature.

The above facts would make it amply clear that the case of the applicant was not the same as of the respondents 3 to 8 and the applicant could not be said to have been similarly situated. He has all through been only in the scale of Rs.650 1200/- and at no point of time he worked in the scale of Lecturers as was the requirement of the guidelines of UGC. His services were ad-hoc and with breaks. It was neither condoned nor regularised. Therefore he cannot claim the benefit of Article 14 of the Constitution based on equality.

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8. The counsel for respondents has relied on the ratio given by the Apex Court State of Bihar and others Vs. Brij Bihari Prasad Singh and another 2000 SCC (L&S) 845 with two other cases, in which it was held -

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard, this Court in Gurusharan Singh Vs. New Delhi Municipal Committee (1996) 2 SCC 459 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court."

It is argued that the applicant cannot claim equality even if the same benefit has been given to the respondents wrongly. However, the case of the applicant is different and it can ^{not} ~~well~~ be equated with that of the respondents.

9. We find that the case of the applicant is altogether on a different footing than that of the respondents and does not satisfy the UGC guidelines for counting of his previous services for the purposes of placing him in the senior scale/Readers grade, as claimed. The case of the applicant has been dealt with in a just and fair manner and, therefore order dated 4.8.1999 warrants no interference.

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....8/-

10. In view of the facts, circumstances and findings above, we are of the view that the OA has no merit and deserves to be dismissed. The OA is accordingly dismissed, ~~at the admission~~^b
~~stage~~^b. No orders as to costs.

21/5/2014
(S.P.Arya)
Member (A)

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(S.G.Deshmukh)
Member (J)

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