

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A. 628/2000

Date of Decision : 21/03/2003

Dr. R. P. Rai : Applicant (s)

Mr. S. P. Saxena & Ms. N. Gohad: Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)

Mr. R. K. Shetty : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

ORDER

1. Whether Reporters of Local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the judgment? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

Dr. R. P. Rai
Senior Lecturer,
National Defence Academy,
Khadakwasla, Pune - 23.

- Applicant -

Advocate : Mr. S. P. Savena & Ms. N. Gohad

Versus

1. Union of India
Through the Secretary,
Ministry of Defence,
New Delhi - 11.
2. The Director of
Military Training,
Army Headquarters,
New Delhi - 11.
3. The Commandant
National Defence Academy,
Khadakwasla, Pune - 23.

- Respondents -

Advocate : Mr. R. K. Shetty

ORDER

O.A. 628 of 2000

Date : 21/03/2003

Hon'ble Shri. A. S. Sanghvi : Member (J).

This is the second round of litigation. Earlier the applicant had moved O.A. 755 of 97 for the expungment of the adverse entries in his ACRs for the years 1993-94, 1994-95, 1995-96 and 1996-97. The Tribunal vide its order 28th January 1999 had partly allowed the O.A. with directions to the respondents to dispose of the representations of the applicant pending with them against the confidential reports of 1993-94 and 1994-95 by a speaking and reasoned order. The reply given by the respondents to the

applicant in response to his representations against adverse remarks for the years 1995-96 and 1996-97 by the competent authority were quashed and set aside. The respondents were also directed to reconsider the representation a fresh and pass a speaking and reasoned order. Now in this O.A., the applicant has sought two reliefs, first for quashing and setting aside the impugned order dated 19.4.99 deciding his representation by a speaking order against his adverse remarks in his ACRs for the years 1994-95, 1995-96 and 1996-97 and in the alternative to direct the respondents not to act on the ACRs of these years for any purpose. The second relief prayed for by the applicant is a declaration that he is entitled to count the regular service from 6.3.81 to 5.3.82 for computing total service for his placement as Senior Lecturer w.e.f. 6.3.86 as per UGC scheme and accordingly for a direction to the respondents to convene review screening committee meeting to reconsider the case of Sr. Lecturer w.e.f. 6.3.86. It is also prayed that the respondents be directed to hold the review committee screening meeting for considering his case for Reader post w.e.f. 6.3.94 as per UGC scheme by ignoring the adverse ACR's for 1993-94.

2. However, during the hearing of the O.A., in view of the objection raised by the respondents about the multiple reliefs having been prayed for in the O.A. Mr. Saxena, learned counsel for the applicant has submitted that he is not pressing for the relief of quashing and setting aside the impugned order dated 19.4.99 etc and confines his case only to the relief regarding the reconvening of the screening committee meeting for considering his case for placement to the Reader's post w.e.f. 6.3.94 as per UGC scheme etc. In view of this

non-pressing of the relief regarding the quashing of the speaking order rejecting the representation against the adverse entries, we are not referring to the applicant's contentions raised on this issue.

3. The brief facts leading to the present O.A. are as under :-

The applicant was appointed as a Lecturer in Maths in N.D.A., Pune in 1982 after being selected through UPSC and consequently promoted as a Sr. Lecturer from 8.3.87. He holds the P.H.D. Degree from leading university from Canada and prior to his selection and appointment as a Lecturer, he had worked as a Pool Officer (Group A Post) under the Council of Scientific and Industrial Research from 6.3.81 to 5.3.82. The benefits of UGC package dated 22.7.88 were extended to the teaching staff of NDA by a letter dated 21.4.93 by the President of India giving effect to these recommendations from 1.1.86. The UGC package inter alia included a career advancement scheme providing for advancement to the higher post after completing the services of certain period. Accordingly, the lecturer holding P.H.D. degree after 5 years of service is entitled to be placed in the higher post of the Sr. Lecturer and those with non P.H.D. degree will be entitled to be placed in the post of Sr. Lecturer after completing 8 years of service. Thereafter they are entitled to the advancement to the post of Reader / Lecturer selection grade, on completion of 8 years of service as Sr. Lecturer. It is also provided by way of a clarification by letter dated 27th November 1990 that regular service in teaching / research work etc rendered in other department / institution will also be counted for eligibility / promotion/ placement

of the teaching staff while considering their cases by the screening committee. According to the applicant, in view of this clarification given by the UGC, his earlier service of 1 year from 6.3.81 to 5.3.82 was required to be considered for his advancement to the higher post of Sr. Lecturer and also for subsequent promotion to the post of Reader on his completing the necessary period of 5 and 8 years respectively. He had thereby become eligible to be promoted as Sr. Lecturer w.e.f. 6.3.86 and that to the post of Reader w.e.f. 6.3.94. The screening committee, to consider the cases of Lecturer for career advancement scheme of the UGC, met for the first time in July 1994 and though the screening committee considered the cases of several Lecturers/ Sr. Lecturers for promotion to the higher post by adding the past service or condoning the break in service, the case of the applicant for addition of 1 year of his service under CSIR was ignored and he was given the promotion to the post of Sr. Lecturer w.e.f. 8.3.87. He was also not considered for promotion to the post of Reader w.e.f 5.3.94 on completion of 8 years of service as Sr. Lecturer. The recommendation of the committee were later approved by the respondent no.1 on 30th August 1994 and accordingly order or promotion / placements were issued. The applicant had submitted a representation on dated 4.1.95, requesting the authorities to count his earlier one year service in CSIR towards the promotion and give him promotion to the post of Sr. Lecturer w.e.f. 6.3.86 and further promotion to the post of Reader w.e.f. 6.3.94. The respondents had however, informed the applicant vide letters dated 23.2.95, 6.4.95 and 12.3.96 that his request for counting his earlier service under CSIR and for promotion w.e.f 6.3.86 and 5.3.95 respectively will be considered and decided in the next screening

committee meeting. The next screening committee meeting though required to be held every year, did not take place till February 1998. The screening committee which met on 26.2.98 did not consider the review of his promotion date, but in view of a charge sheet issued by the respondent no.1 to the applicant on dated 16.2.95 under the CCS (CCA) Rules, kept its recommendations in a sealed cover on the ground that disciplinary proceedings were pending against him. The disciplinary proceedings finally resulted into his exoneration vide order dated 11.2.2000. In spite of that recommendations of the screening committee remained in the sealed cover. The applicant had approached the Tribunal for the directions against the respondent no.3 to open the sealed cover and in view of the miscellaneous petition filed by him, the respondent no.3 informed the Tribunal that the applicant was exonerated in inquiry and the sealed cover containing recommendation of the screening committee held on 26.2.98 would be opened and result declared. However, thereafter the respondent no.3 vide his letter dated 20th July 2000 informed the applicant that on opening of the sealed cover it was found that the committee had found him not yet fit for promotion to Reader's post. He has not been informed anything about the decision of the screening committee on the point of counting his earlier service of 6.3.81 to 5.3.82 in CSIR and considering his eligibility for promotion to Sr. Lecturer post w.e.f. 6.3.86 and for Reader's post w.e.f. 6.3.94. The applicant has alleged that in all possibilities the respondent no.3, mala fide, had not even referred or pressed the issue of reviewing the earlier decision of not counting his one year service before the screening committee. It is also contended by the applicant that the respondent no.3 being prejudiced against him, had mala fide endorsed adverse remarks in

his ACRs of the years 1993-94 and onwards. The adverse remarks of 1993-94 and 1994-95 were communicated to the applicant for the first time only on dated 6.12.95 by two separate letters and he had submitted separate representations against these adverse remarks. His representations were however not replied at all by the respondents and the respondent no.3 further communicated the adverse remarks in his ACRs for the years 1995-96 and 1996-97 forcing the applicant to make representation against those adverse remarks in the ACRs also. The representation dated 5.8.96 was rejected by letter dated 8.8.96 and representation dated 21.7.97 was rejected by letter dated 31.7.97. The applicant therefore moved the Central Administrative Tribunal by filing O.A. No. 755 of 97 praying for directions to expunge the adverse entries in ACRs for the years 1993-94 to 1996-97. The Tribunal in its order dated 28.1.99 had quashed the replies given by the respondents on remarks for the years 1995-96 and 1996-97. It had also directed the respondents that the representation against adverse remarks in ACRs for 1993-94 and 1994-95 pending with them be disposed of in 3 months time etc.

4. The grievance of the applicant is that the screening committee which met on 26.2.98 had taken into consideration the adverse ACR of 1993-94 to 1997 and concluded that he was not yet fit for promotion to the post of Reader. According to him the screening committee could not have taken into consideration the adverse remarks of 1993 to 1997 in his ACRs as they were not communicated to him and the representations made by the applicant against them were still pending decision. He has also submitted that the committee was required first to consider his case for review of the

earlier committee meeting for addition of 1 year in his service and antedating his promotions. According to him, if this is done, then he would be entitled to be promoted as Sr. Lecturer w.e.f. 8.6.86 instead of 8.3.87, on completion of 5 years of service as Lecturer and thereafter would be eligible to be considered for promotion to the post of Reader w.e.f. 6.3.94 on completing another 8 years of service. The respondents as well as the screening committee have, it appears not looked into this aspect of the applicant's promotion to Sr. Lecturer etc and wrongly considering the adverse entries in his ACRs for the years 1994-95, 1995-96 etc, not recommended him for promotion to the post of Reader. According to the applicant the screening committee could not have looked into his ACRs prior to 6.3.94 and since there were absolutely no adverse entries prior to 6.3.94 in his ACRs, he could not have been denied the promotion for the post of Reader. He has maintained that the screening committee has not acted according to rules and law and therefore the action of the screening committee deserves to be quashed and set aside and the respondents are required to be directed to hold a review screening committee meeting for considering his case for placement to the Reader's Post w.e.f. 6.3.94 as per UGS scheme.

5. The respondents have resisted the O.A. and filed their written statement. They have denied the allegation of the applicant that the adverse remarks were given in his ACRs with mala fide intentions and have contended that in O.A. No. 755 of 97 the Tribunal has gone into this aspect and has rejected the contention of the applicant in this regard. They have also contended that the screening committee which met in July 1994 had gone through each and every

details available with them to reckon the services rendered by the applicant. The screening committee which met for the second time had also taken all the factors into consideration a fresh. According to them the question of counting of past service is to be decided by the competent authority as per the rules. The issuance of the charge sheet against the applicant on dated 16th February 1995 had no bearing in the out come of the screening committee. They have also contended that the O.A. is barred by limitation as the same has been filed after a period of 1½ years of the speaking orders passed by the authority concerned.

6. We have heard the learned counsels of both the parties and carefully considered the rival contentions.

7. Since the relief of expungment of the adverse remarks in the ACRs for the years 1993-94, 1994-95, 1995-96 and 1996-97 is not pressed by the learned counsel of the applicant, in view of the respondents having raised the objection against the multiple reliefs prayed for, the only question that arises for our determination is whether the applicant was wrongly denied the promotion to the post of Reader on account of the screening committee considering the adverse entries for the period of 1993-94 also. So far the question of addition of 1 year of past service i.e., for the period from 6.3.81 to 5.3.82 in CSIR by the applicant to the present service in NDA is concerned, Mr. R. K. Shetty, learned counsel for the respondents has at the out set submitted that the respondents have considered addition of this 1 year of service to his service in the NDA and a proposal to that effect was sent to Army Headquarter on 10/12 September 1997. According to Mr. Shetty the screening committee

was not competent to take any decision so far the addition of 1 year of past service was concerned and under the rules only the competent authority is entitled to take this decision. Accordingly, the proposal has already been sent with due justification to the competent authority. He has referred to the Annexure R/1 dated 10/12 September 1997 produced along with the reply to the miscellaneous petition and submitted that the department has sent the proposal for considering that the applicant has completed 5 years of service as per UGC norms as on 8.3.86 and also being eligible for placement as sr. scale Lecturer as on 8.3.86 as well as completing 8 years of service as sr. scale Lecturer as on 8.3.94 and being eligible for placement as Lecturer in selection grade / Reader w.e.f. 8.3.94. The letter of the NDA with the statement of the case of the applicant for addition of 1 year of service put up by him at CSIR and being eligible for placement as a Sr. Lecturer as on 8.3.86 and eligibility for placement as Lecturer in selection grade / Reader w.e.f. 8.3.94, has been forwarded to the competent authority by the department for the appropriate decision. It means that the authority concerned have already accepted the contention of the applicant and proposed the addition of 1 year of service as per the rules, in his service with the NDA. We are however not told about the out come of this proposal but the fact remains that the respondents have acknowledged that the applicant is eligible for inclusion of 1 year of service as CSIR in the service put up by him in NDA. The relevant instructions also entitle the applicant for including his past service of CSIR in the services put up by him at the NDA and as such he would be eligible to be placed in the sr. scale Lecturer as on 8.3.86 and also would be eligible for consideration for placement as Lecturer in selection grade / Reader w.e.f. 8.3.94.

8. So far as the question of adding 1 year of service to the existing service in NDA is concerned, the letter dated 27.11.90 of the UGC Annexure A/4 clearly supports the case of the applicant. It inter alia provides that the previous service without any break as a lecturer or equivalent in a University/College/National Laboratory or other Scientific Organisation (CSIR), ICAR, BRDO, UGC etc) and as a UGC Research Scientist should be counted for placement of Lecturer in Sr. scales / selection grade. It also lays down 5 conditions for such counting of the previous service but it is an undisputed position that the applicant was satisfying those conditions. Under the circumstances, when the applicant demanded that his past service of 1 year with CSIR should be counted towards his placement for sr. Lecturer, it was not open to the authorities concerned to ignore his demand. Though the applicant had made representation in this regard, it appears that neither screening committee which met in the year 1994 nor competent authority consider these aspects and the promotion to the applicant was given only with effect from 1987 instead of 8.3.86. Since this was clearly a lapse on the part of the respondents as for unexplained reason they had ignored the demand of the applicant all through out, the respondents will have to be directed to consider his promotion to the post of the Sr. Lecturer with effect from 8.3.86 and not w.e.f. 8.3.87.

9. This takes us to the second stage of promotion i.e., to the post of Reader or the selection scale sr. Lecturer. It is no doubt true that the applicant on completion of 8 years of service cannot be automatically given promotion to the post of Reader. The letter dated 22.7.88 issued by the Department of Education in the Ministry of Human Resources Development inter alia provides that promotion to

the post of Reader will be through a process of selection by a selection committee to be set up under the Statutes/Ordinance of the University concerned or other similar committees set up by the appointing authorities in accordance with the guidelines to be laid down by the UGC. Hence it cannot be argued that on completion of the 8 years of service as a Sr. Lecturer the applicant was entitled to automatic promotion as a Reader or given the placement in the post of the Reader. The applicant was required to undergo the selection for the said post and it is an un-controverted fact that when the screening committee met in the year 1998, he had already completed 8 years of service and had become eligible for consideration for the post of Reader. It is also an undisputed position that the applicant was considered by the said committee but his assessment with regard to the fitness for the promotion to the post of Reader was kept in the sealed cover by the committee as the applicant was facing disciplinary proceedings at that time. The applicant was charge sheeted on dated 16.2.95 and when the screening committee met on 26.2.98 the departmental inquiry initiated against him was not finalised. The screening committee was therefore justified in keeping its findings with regard to the fitness of the applicant for further promotion in the sealed cover. The applicant was exonerated in the disciplinary proceedings and subsequently the sealed cover was opened and he was communicated the result of the assessment of the screening committee. The screening committee had assessed him not yet fit and as such he has not been given further promotion to the post of Reader. The applicant has voiced the grievance that while assessing him as not yet fit for promotion the screening committee had in all probability taken in consideration the adverse remarks passed against him in his ACRs of 1993-94 and subsequent

years. We had directed the learned counsel for the respondents to make available the minutes of the screening committee so that the grievance made by the applicant can be verified. The minutes of the screening committee as well as the ACRs of the applicant for the years 1988 to 1993-1994 were also made available by the learned counsel of the respondents and on perusal of the same, we have found that the grievance of the applicant has no substance. The screening committee had not considered the ACRs beyond 1993-94 so far the applicant was concerned. We also found that screening committee had sufficient material before it for arriving at the conclusion drawn by it. According to Mr. Saxena learned counsel for the applicant, the screening committee could not have considered the ACRs of 1993-94 as only the ACRs prior to 8.3.94 would have been relevant for the purpose of assessing the fitness of the applicant for further promotion. It appears that since no decision was taken at the time when the screening committee met on 26.2.98 regarding the addition of 1 year of past service in CSIR to the service put up by the applicant in NDA and as such considering that the applicant had become eligible for the post of Reader only on 8.3.95, the screening committee had taken into consideration the ACRs of 1993-94 also. Ordinarily, this would entitle the applicant to ask for a review DPC to consider his case a fresh. However, the learned counsel of the respondents has drawn our attention to the assessment of the applicant made in the ACRs of the previous years and has pointed out that even if a review screening committee will be convened the findings are not likely to be altered. According to him the bench mark adopted by the screening committee was 'good' and the applicant was never assessed 'good' in the previous years. We are

inclined to agree with the submission of the learned counsel for the respondents. We find that directing a review screening committee for the assessment of the applicant for the fitness for promotion to the post of Reader would be an exercise in futility as the material on record discloses that there is no likelihood of any change in the assessment of the case of the applicant.

10. For the reasons discussed above and in the facts and circumstances of the case, we see no justification in directing the convening of the review DPC for assessing the applicant for the promotional post of Reader. However, the applicant is entitled to addition of 1 year of his service of CSIR in the services put up by him with NDA and since we are not aware whether any decision is taken by the respondents in this regard, we direct the respondents to give him benefit of addition of 1 year of the services put up by him with CSIR in this service put up by him with NDA and accordingly consider promoting him to the post of Sr. Lecturer w.e.f. 8.3.94 with all consequential benefits. We expect that necessary order in this regard will be issued by the respondents within 3 months from the date of the receipt of the copy of this order. Rest of the prayers of the applicant stands rejected. With this direction the O.A. stands disposed of. No order as to costs.

Signature
(G. C. Srivastava)
Member (A)

Signature
(A. S. Sanghvi)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.A. 36 of 2003 In
C.A. 628 of 2000

Date of Decision : 12. 06. 2003

Mr. Dr. R. P. Rai : Applicant (s)

Mr. S.P. Saxena & Ms. N. Gohad : Advocate for the Applicant (s)

Versus

Union of India & Ors. : Respondent (s)

____ : Advocate for the Respondent (s)

CORAM:

THE HON'BLE MR. A. S. SANGHVI : MEMBER (J)

THE HON'BLE MR. G. C. SRIVASTAVA : MEMBER (A)

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Dr. R. P. Rai
Senior Lecturer,
National Defence Academy,
Khadakwasla, Pune - 23.

- Applicant -

Advocate : Mr. S. P. Saxena & Ms. N. Gohad

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence,
New Delhi - 11.
2. The Director of
Military Training,
Army Headquarters,
New Delhi - 11.
3. The Commandant,
National Defence Academy,
Khadakwasla, Pune - 23.

- Respondents -

(Decision by Circulation)

**ORDER
R.A. 36 of 2003
In
O.A. 628 of 2000**

Date : 12 / 06 / 2003

Hon'ble Shri. A. S. Sanghvi : Member (J).

The review is moved by the original applicant of the O.A. for correction of a date mentioned in the judgment delivered on dated 21.3.2003. According to the review applicant the date mentioned as 8.3.94 in the said para i.e, the last para of the judgment ought to be 8.3.86 and the same appears to have been written by clerical mistake in view of the discussion in para 7 of the judgment.

2. We have gone through the judgment and we agree with the review applicant's submission that the date is written by mistake. The applicant was entitled to be promoted as Sr. Lecturer w.e.f. 8.3.86 and not from 8.3.94 and since this is a clerical mistake in mentioning the date we allow the review application and direct the Registry to correct the date as 8.3.86 instead of 8.3.94 mentioned in the 10th line of para 10 of the judgment and certified copy given, if any, also be called for and corrected accordingly.

3. The R.A. stands disposed of with this direction. No costs.

G. C. Srivastava
(G. C. Srivastava)
Member (A)

A. S. Sanghvi
(A. S. Sanghvi)
Member (J)

MBT

order/25/9 *sent despatched*
to Applicnt, Department (G)
on 25.6.9