

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 816 of 1998.

Dated this Tuesday the 14th day of August, 2001.

G. T. Pillai, Applicant.

Shri S. P. Saxena, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri R. R. Shetty for
Shri R. K. Shetty, Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library.

B. N. BAHADUR
MEMBER (A).

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 816/98

Dated this Tuesday the 14th day of August, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

G. T. Pillai,
Foreman Instructor,
Department of Basic Engineering,
National Defence Academy,
Khadakwasla,
PUNE - 411 023.

... Applicant

(By Advocate Shri S. P. Saxena)

VERSUS

1. The Union of India
through The Secretary,
Ministry of Defence,
DHQ PO, New Delhi 110 011.
2. The Director General of
Ministry Training,
General Staff Branch (MT 7),
Army Headquarters, DHQ PO,
New Delhi - 110 011.
2. The Commandant,
National Defence Academy,
Khadakwasla, PUNE 411 023. . . Respondents.

(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).

ORDER

PER : Shri B. N. Bahadur, Member (A).

This is an application made by Shri G. T. Pillai,
Foreman Instructor in the National Defence Academy (N.D.A)
seeking the reliefs as follows :

P.A.S

"8.a) to declare that the Applicant while working as Demonstrator from 01-01-1986 to 30.06.1995, is entitled for the scale of pay of Rs. 1740-3000,

b) to direct the Respondents to refix the basic pay of the Applicant in the scale of Rs. 1740-3000 with effect from 01-01-1986 and to grant him annual increments in the said scale every year,

c) to award all consequential benefits including arrears of pay, etc.,

d) to pass any other appropriate orders in the facts and circumstances of the case,

e) to award cost of application.

2. The facts of the case, as brought forth by the Applicant in the O.A., are that after passing S.S.L.C. and I.T.I. Draughtsman's Reexamination the Applicant was appointed under Respondent No. 3 as Draughtsman Technical w.e.f. 02.02.1965. Thereafter he applied for the post of Demonstrator by Direct Recruitment, was selected and appointed as Demonstrator from 04.02.1967 and placed in the then existing pay scale of Rs. 205-280. The Applicant avers that after 01.01.1996 with the U.G.C. Package coming in, the scale of pay of Demonstrators was revised to Rs. 1320-2040. The Applicant continued to work as Demonstrator till June end 1995 and was promoted to the post of Foreman Instructor (W.K.S.P.) w.e.f. 01.07.1995 in the scale of pay of Rs. 1400-2300.

3. The Applicant then goes on to describe how the U.G.C. Package, condition of services, etc. were applied to N.D.A. and that the entire teaching staff in the N.D.A. were provided with scales of pay as per U.G.C. Package



except Demonstrators. He alleges that the Demonstrators were denied benefits of U.G.C. pay scale by N.D.A. in an arbitrary manner. This in fact is the crux of the grievance with which the Applicant comes up to the Tribunal seeking the reliefs as mentioned above.

4. The Applicant then goes on to narrate how the two O.As. filed before this Tribunal, namely - O.A. No. 1049/96 and 113/97 were disposed of on 01.09.1997 by a direction to Respondents to place the Demonstrators, who were Applicants in these two O.As. in the U.G.C. scale of pay of Rs. 1740-3000 right with effect from 01.01.1986. A copy of the judgement has been enclosed at exhibit A-1. The contention of the Applicant is that although he was not a party in those O.As., but since he was Demonstrator till 30.06.1995 he too is entitled to be placed in the pay scale of Rs. 1740-3000 w.e.f. 01.01.1986 till 30.06.1995 like other Demonstrators who had been provided relief by the Tribunal. It is further averred that the post of Foreman Instructor held by the Applicant is not a post under the U.G.C. Package and hence does not carry U.G.C. scale. Certain grounds are made out in the application which amongst others, were argued by the Applicant's Learned Counsel.

Ans
5. The Respondents ~~in the case~~ have filed a Written Statement of reply where the defence taken is reproduced in gist below :

Ponb

(a) That the Applicant has been promoted from the post of Demonstrator to Foreman Instructor in the scale of pay of Rs. 1400-2300 and hence there is no question of giving him benefit that is now due to Demonstrators when he has ceased to be a Demonstrator and opted to go on promotion to a different post and a different cadre.

(b) Applicant's opting for promotion to the post of Foreman Instructor estops him from seeking the scale of Demonstrator and/or even reversion thereto and hence the question of giving back-date benefits does not arise.

(c) Since this is a money claim, it cannot be made after more than three years and the Applicant is coming up very belatedly to the Tribunal.

(d) The qualification possessed by the Applicant is high school and I.T.I. Draftsmanship and hence he is not competent to teach cadets who possess higher qualifications. Similarly, the Applicant does not fulfill essential qualifications as per recruitment rules, whereas the Applicants in the two O.As. mentioned, fulfilled those qualifications and were therefore extended the benefit of pay scales of Rs. 1740-3000.

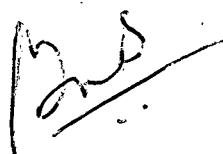
(e) The U.G.C. pay scales were not to be extended to Demonstrators as per the letter dated 02.04.1993 referred to by the Applicant.



6. We have seen the papers in the case and have heard the Learned Counsel on both sides, namely - Shri S. P. Saxena for the Applicant and Shri R. K. Shetty for the Respondents. The Learned Counsel for Applicant, Shri S.P. Saxena, took us over the facts of the case, as reproduced above, and first referred to the decision of the Allahabad Bench of the Tribunal which had provided benefit of U.G.C. scales to similarly situated persons in the Dehradun Academy. Then the other two persons mentioned, came up to this Tribunal in the two O.As. mentioned, and the dispute of not providing benefit of the scale of Rs. 1740-3000 to Demonstrators in N.D.A. therefore stood settled, Shri Saxena argued.

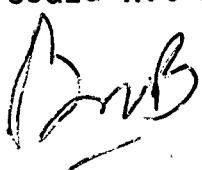
7. Shri S. P. Saxena continued to state that the Applicant met the qualifications required for Demonstrators since he is a graduate in Science and that in any case the qualification of promotees were not required to be the same as that of direct recruits.

8. Arguing the case on behalf of the Respondents, the Learned Counsel, Shri Ravi Shetty (for Shri R. K. Shetty) made the point that the Applicant has been promoted from 01.07.1995 in a separate cadre of Foreman Instructor. Since he went there knowingly and out of his own option, he is now estopped from asking for better prospects. Admitting the ratio of the Allahabad Bench judgement referred to, Shri Shetty stated that it was in-deed a position accepted but only for qualified persons. He denied that Applicant



was qualified and stated that he was not even a B.Sc. Shri Shetty cited the case of Sita Devi & Others V/s. State of Haryana & Others reported at JT 1996 (7) SC 438.

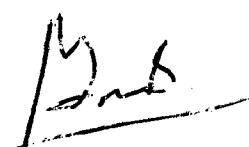
9. The Learned Counsel for the Respondents then raised the issue of delay and laches. He argued that the Applicant was well aware of the litigation by his colleagues in this Tribunal but preferred to sit on the fence and keep quiet. He drew support from the ratio of the Hon'ble Supreme Court in the matter of Bhoop Singh. Referring to the rejoinder of the Applicant, the Learned Counsel cited the case of M. K. Francis & Others V/s. The Chairman, Atomic Energy Commission & Others reported at 1999 (3) AI SLJ CAT 347. The point made by the Respondents about Applicant's claim being a monetary claim and hence time barred was reiterated strenuously by Shri Shetty, who cited the case of State of Madhya Pradesh & Another V/s. Pramod Bhartiya & Others reported at 1993 (23) ATC 657. Shri Shetty then made a point that Deharadun Demonstrators are different and Allahabad judgement cannot be followed and stated that the nature of duties were different and also the qualifications laid down stood against the Applicant, as could be seen from paragraph 13 of the Allahabad Bench judgement. Shri Shetty cited the case of Union Of India V/s. P. K. Dey in his support, reported at 2000 (5) SLR 764. Shri Shetty concluded by saying that no protection could be allowed in a Foreman's post. Also that the Applicant could not be provided with the liberty to revert.



10. Rearguing the case briefly, Shri S. P. Saxena ^{that} ~~that~~ made a point ^{that} in the present case, ~~that~~ there was discrimination even within the N.D.A. even if we forget the Dehradun Academy case. This meant that there was a clear violence to Articles 14 and 16 of the Constitution. On the point of delay and limitation, Shri S. P. Saxena stated that this was a recurring cause of action and should be viewed as such, in that, he had waited only till 1998 before coming up to the Tribunal.

11. On perusal of the relief claimed by the Applicant, we find that the Applicant has not claimed the relief of reversion also, thus it is not a minor relief, and hence, the consideration of the said question does not arise. The applicant has claimed the monetary benefit w.e.f. 01.01.1986 to 13.06.1995. He has filed the O.A. in the Tribunal on 20.08.1998. Monetary claims for the period earlier to the filing of the O.A., one year's claim, can be awarded but the applicant failed to file the O.A. within the prescribed period. Hence, the monetary claims are barred by limitation.

12. It is ~~indeed~~ important to note that the Applicant had made a conscious choice when he chose to go into the cadre of Foreman. While we do not have before us the conditions that were either imposed on him or accepted by him in choosing this somewhat different path of career, there is some strength in the contention made by learned counsel for the Respondents that once having chosen this course, he cannot claim to revert back to the cadre of Demonstrators.



It is also true, as pointed out above, that the desire of the Applicant is to revert and seek the benefits in the Demonstrators cadre only because of developments as described, whereby Demonstrators were also given higher benefits in monetary terms because of orders for the application of UGC Pay scales. As stated, normally no chance of reversion to the earlier channels can be granted only because circumstances have developed whereby earlier cadre is more beneficial.

13. Further more, it has been stated that the Applicant or anybody who is a Demonstrator can get the benefits of the UGC scale only if he or she possesses the qualifications for the post of Demonstrators. There is a contest on this question in the sense that learned counsel for the Applicant pleaded on the one hand that the Applicant is fully qualified and on the other, that the qualifications prescribed for Direct Recruits are normally not the qualifications prescribed for promotees who are allowed to do with lesser qualifications. Now this is a point on which we cannot exercise our judgement as to what or what should not be the qualifications. The Applicant has not been able to prove that he possesses the qualification that are required and in the face of clear assertions made by the Respondents that the Applicant does not possess the qualifications prescribed, we are unable to order any relief as sought for.



14. In the circumstances, the Applicant has not been able to establish a case for himself and the O.A. is liable to be dismissed. The O.A. is, therefore, dismissed. No orders as to costs.

S. L. Jain
(S. L. JAIN)
MEMBER (J)

B. N. Bahadur

14-8-01
(B. N. BAHADUR)
MEMBER (A).

os/sj*