

***CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH***

OA No-3336/2016

Order Reserved on: 30.09.2016
Order Pronounced on: 06.10.2016

**Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Shri Ganesh Ramu,
S/o Shri Kalasupothi,
R/o 3/51, NCERT,
Aurbindo Marg,
New Delhi-110016.

-Applicant

(By Advocate: Ms. Deepali Gupta)

Versus

National Council of Educational
Research and Training
Through: Secretary,
Aurbindo Marg,
New Delhi-110016.

-Respondent

O R D E R

Per Sudhir Kumar, Member (A):

This case was heard and reserved for orders at the stage of admission itself, since the learned counsel for the applicant was not inclined to withdraw this OA as filed.

2. Through this OA the applicant has challenged the action of the respondent in not granting him the actual/notional benefits with respect to his selection to the post of Assistant in the year 2003 for which his actual appointment was delayed by the respondent and there was no fault on his behalf.

3. The brief facts of the case are that the applicant is a handicapped person suffering from physical disability assessed at 100% by the Medical Board, Pandit Madan Mohan Malviya Hospital, New Delhi, which is impugned at Annexure-A dated 15.05.2014. He has appeared in the written examination held by the respondent for the post of Assistant in the year 2003. The respondents issued the Memorandum dated 27.01.2004 (Annexure-B) through which he was directed to appear before the Selection Committee for interview provisionally, subject to the fulfilment of the eligibility conditions. He was also directed to bring his original documents for verification. He was successful and his name was reflected in the list of successful candidates, but the respondents failed to issue appointment letter to him for enabling his joining on the said post within reasonable time.

4. It was submitted that the said selection was challenged by some persons in WP (C) No.166/2006 and other cases, being WP (C) Nos.1213-30/2004, before the Hon'ble Delhi High Court, which was decided on 17.04.2009, and in compliance with the judgment of the Hon'ble Delhi High Court the respondents offered an appointment to the applicant for the post of Assistant in the pay scale of Rs.9300-34800+Grade Pay of Rs.4200/- (Revised) Rs.5500-175-9000 (Pre-revised) and all admissible allowances vide Memorandum dated 28.05.2009 (Annexure-C).

5. The applicant accepted the offer of appointment vide his letter dated 08.06.2009. However, he sought one month's time, to enable him to be relieved from the Directorate of Census Operations, Union Territory of Chandigarh, where he was working on the post of Assistant Compiler prior to his aforesaid appointment.

6. The respondents, vide their letter dated 10.08.2009, then asked the applicant to join his duties on the post of Assistant, which he did on 25.08.2009, vide joining report of even date. As the applicant was selected in the year 2004 against a vacant post, but was not given the actual appointment to the post of Assistant, as also the service benefits w.e.f. his actual selection in the year 2004, he requested the respondents to give him the benefit, either notional or actual, for the period from the year 2004, when he was actually selected for the post of Assistant, as the same had affected his seniority and entitlement to benefits etc. It was also mentioned that as per the applicable Recruitment Rules (RRs, in short) of the year 2002 applicable to respondent-organization, he was selected in the year 2004, and was entitled to be considered for promotion to the post of Section Officer on completing three years' regular service on the post of Assistant. However, due to delay occasioned on the part of respondents in giving appointment to the applicant belatedly five years after being selected, his interests have been prejudicially affected. He has been given the appointment now, after having been selected in the year 2004, and had he joined then, he would have been considered and promoted to the post of Section Officer on

completion of three years of service, as per applicable RRs, and would have further become entitled to be considered for promotion to the post of Under Secretary after seven years of continuous service.

7. As there was delay of five years on the part of the respondents in appointing the applicant after his selection in the year 2004, he has claimed that he has been denied the service benefits which had accrued to him from 2004, i.e., the year of his selection to the post of Assistant, till the date of his actual appointment in the year 2009. Despite several requests made by the applicant, respondents have not provided to him any service benefits for the said period, either actual or notional, and he has been promoted to the post of Section Officer only after five years of regular service as Assistant.

8. Aggrieved by the action/inaction of the respondents, the applicant had sent a representation dated 03.03.2016, which was neither replied to by the respondents, nor did they provide him the actual/notional service benefits, as also consequential benefits, for the period from 2004 to 2009, as per the applicable Rules, which he has termed to be highly unjustified and illegal.

9. The applicant has taken the ground that the action of the respondents is violative of the principles of natural justice, as there was no fault on his part. He has further taken the ground that the respondents are duty bound to grant/release the service benefits for the period from 2004 to 2009 to him, either actually or notionally, as the

delay in his appointment to the said post was on their part, and not on his part. He has further taken the ground that the actions of the respondents have been highly prejudicial, illegal, unjustified and violative of his fundamental and legal rights. Therefore, he has prayed for the following reliefs:-

- “i) Issue a writ/order directing the respondent to count the period w.e.f. the selection of applicant to the post of Assistant in year 2004 till his actual appointment in the year 2009 for grant of service benefits,
- ii) Direct the respondents to grant the actual or notional service benefits to the applicant for the said period,
- iii) Direct the respondents to grant all consequential benefits to the applicant arising thereof,
- iv) Grant any other relief as may be deemed fit and proper under the facts and circumstances of the case,
- v) Costs of the proceedings may also be granted in favour of the applicant and against the respondents”.

10. Heard. We have considered the arguments put-forth by the learned counsel for the applicant. In the instant case it is not the case of the applicant that he was sitting idle during the period from 2004 to 2009. He was actually working during this period with the Directorate of Census Operations, Chandigarh, U.T. on the temporary post of Assistant Compiler where he had been employed w.e.f. 10.10.2001 as per Annexure-D dated 08.06.2009, in which the applicant himself has submitted as follows:-

“The documents required, vide your aforesaid memo are lying in my present office viz., Directorate of Census Operations, Chandigarh U.T. (Ministry of Home Affairs, Government of

India), Janganana Bhawan, Plot No. 2-B, Sector 19-A, Madhya Marg, Chandigarh-160019, where I am employed currently w.e.f. 10.10.2001. These documents may be called for when my service record is to be called alongwith Last Pay Certificate”.

11. The issue, therefore, is as to whether during the period of his working with the Directorate of Census Operations, Chandigarh U.T., under the Ministry of Home Affairs, Government of India, where he was employed w.e.f. 10.10.2001, and his service record was to be called along with Last Pay Certificate, can he be allowed any other benefits also in addition to the service benefits which he has already availed of during the course of his employment with the Directorate of Census Operations, Chandigarh U.T., under the Ministry of Home Affairs, Government of India. We do not find that the applicant can claim service benefits for the post of Assistant with the respondent organization-NCERT for the claimed period from 2004 to 2009, when at the same time he was enjoying the service benefits from the Directorate of Census Operations, Chandigarh U.T., which comes under the Ministry of Home Affairs, Government of India. Therefore, while the applicant can certainly lay a claim for counting of his past service with the Directorate of Census Operations, Chandigarh U.T. for the purpose of pension etc. and other retiral benefits, he cannot be allowed to concurrently claim benefits of appointment in two places, as he has claimed in respect of the respondent-organization. No person can occupy two liens simultaneously, or even lay a claim to a lien against a second post, while

he had continued to derive all service benefits from another organization, with or without occupying a lien against a substantive post.

12. Therefore, the OA does not lie, and is dismissed *in limine*, at the stage of admission itself.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Sudhir Kumar)
Member (A)

cc.