

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 374/2014

Date Of Decision: 07th June, 2019.

**CORAM: Dr. BHAGWAN SAHAI, MEMBER (A).
R.N. SINGH, MEMBER (J).**

Dr. S.K. Pandey, age 42 yrs.,
Son of Shri Lalchand Pandey, and working as
Assistant Professor, National Defence Academy,
Khadakwasla, Pune- 411 024.
(R/o: D-3 Area, 168/A, N.D.A., Khadakwasla
Pune- 411 024.

...Applicant.
(By Advocate Ms. Sujatha Krishnan)

Versus

1. The Union of India,
Through the Secretary,
Ministry of Defence, DHQ. P.O.,
South Block, New Delhi- 110 001.
2. The Secretary,
Department of Education,
Govt. of Arunachal Pradesh,
Itanagar - 791 103 (Arunachal Pradesh).
3. The Principal Director (Pers.),
HQ. Integrated Defence Staff,
Ministry of Defence,
Kashmir House, New Delhi- 110 011.
4. The Commandant,
National Defence Academy,
Khadakwasla, Pune- 411 023.
5. The Principal,
National Defence Academy,
Khadakwasla, Pune- 411 023.
6. The Secretary,
University Grants Commission, Bahadur Shah
Zafar Marg, New Delhi- 110 002.
7. The Registrar,
Birla Institute of Technology and Science,
Pilani - 333 031 (Rajasthan).

8. The Controller,
Controller of Defence Accounts (O),
Golibar Maidan, Pune - 411 001.

... Respondents.

(By Advocate Shri V S Masurkar & Shri Kunal
Kirpalani)

Reserved on : 08.04.2019
Pronounced on : 07.06.2019

ORDER

PER:- Dr. Bhagwan Sahai, MEMBER (A).

This application has been filed by
Shri S.K.Pandey on 09.05.2014 under Section
19 of the Administrative Tribunals Act, 1985.

He seeks quashing and setting aside of
impugned orders dt. 20.06.2013 and 30.04.2013
passed by the respondents (Annex A1 & A2);
declaring him eligible and entitled for
getting counted his service rendered as
Lecturer under State Government of Arunachal
Pradesh as well as with Birla Institute of
Technology & Science, Pilani in view of
orders of Ministry of Human Resources
Development (HRD), Government of India and
regulations issued by University Grants
Commission (UGC) from time to time;
direction to respondent Nos. 1, 3 & 4 to
consider his case by holding a review meeting
of Screening Committee to promote him to post

of Senior Lecturer from 17.01.2006, the date on which he joined with NDA; and grant of consequential benefits including arrears of pay and allowances along with cost of this OA.

2. Briefly stated facts:

2(a) The applicant has stated that after passing his M.A. Examination from Banaras Hindu University in 1995 and completing Ph.D. Degree programme with Mahatma Gandhi Kashi Vidyapeeth, Banaras in 2003, he worked as Assistant Professor(English) as a teaching faculty member at Jawaharlal Nehru Govt. College, Pasighat dist., East Siang, under the State Government of Arunachal Pradesh from 13.11.1996 till 31.03.2004 when his resignation was accepted by the State Government of Arunachal Pradesh (Order dt. 16.07.2004, Annex A-4). From 05.04.2004 to 06.01.2006, he worked as Lecturer (English) with BITS, Pilani.

Thereafter, on being selected by the UPSC for the post of Lecturer(English), by Order of Ministry of Defence, Govt. Of India dt. 30.12.2005, he was appointed to the post

of Lecturer (English) at the National Defence Academy, Khadakwasla, Pune and on this post he joined on 17.01.2006. As per order dt. 26.09.2007, issued by Commandant, NDA, Khadakwasla, Pune, he satisfactorily completed his probation.

2(b) After joining at the NDA, he represented on 22.02.2006 for counting his previous service with the State Government of Arunachal Pradesh and BITS, Pilani for pensionary benefits under the Old Pension Scheme of 1972 after condoning a break of service during the period of his working with BITS, Pilani. He also requested for fixation of his pay based on the last pay drawn by him under the State of Arunachal Pradesh.

2(c) A letter in this regard was also sent by the Commandant, NDA, Khadakwasla to Controller of Defence Accounts, Southern Command, Pune (Annex A-6) on 03.03.2006 and again on 22.02.2007 but no reply was received.

2(d) The applicant claims that he became due for upgradation to the post of Senior Lecturer in January 2010 as per stipulations

under the Career Advancement Scheme of UGC because of completion of four years of service with the NDA. For counting his past services rendered with the State Government of Arunachal Pradesh and BITS, Pilani, he further submitted representations on 14.10.2010 & 03.11.2010 pleading that he should be granted upgradation under the Career Advacement Scheme as per the UGC Regulations dt. 24.12.1998 (Annex A-9). However, he did not receive any reply to his representations and at last, he received a reply on 29.01.2011 from the Registrar of NDA stating that on his case, reply had already been sent on 06.11.2010 (Annex A-12).

2 (e) Aggrieved by this action of the respondents, the applicant states that he submitted another detailed representation through proper channel to the Secretary, Ministry of Defence, New Delhi on 14.02.2011 explaining how his service rendered earlier as Lecturer with the State Government of Arunachal Pradesh and BITS, Pilani (a deemed University) has not been counted by the respondents for his career advacement. His

subsequent representation dt. 29.02.2012 to respondent No. 4 was also forwarded to Principal Director (Personnel), New Delhi, recommending his case. But even that did not result in any response. Due to denial of promotion to him under the Career Advancement Scheme of UGC by the respondents, the present OA has been filed.

3. Contentions of the parties.

The applicant contends that:

3(a) the respondents have given benefit of counting earlier service to a number of teaching faculty members in view of letter of UGC dt. 27.11.1990 (Annex A-20). In the above letter, it has been categorically stated that no distinction should be made with reference to nature of management of the institution where previous service was rendered(private/local body/Government), if the relevant criteria for placement in Senior Scale/Selection Grade under the Career Advancement Scheme for Lecturers are satisfied. In view of this, the applicant is entitled for counting of his earlier service with the State Government of Arunachal

Pradesh and BITS, Pilani for his upgradation under the Career Advancement Scheme of UGC;

3(b) under DoP&T OM dt. 01.09.1998 (Annex A-21) also, Government decision has been communicated that all appointments by direct recruitment are in public interest and benefit of counting a previous Group-A service to meet conditions of minimum eligibility for recruitment/service rules at the time of lateral entry on direct recruitment as qualifying service for promotion to higher grades will be admissible;

3(c) the NDA is affiliated with Jawaharlal Nehru University, New Delhi and the UGC notification on Career Advancement Scheme being applicable to all Central Universities, contention of the respondents is contrary to the statutory provisions laid down by the Ministry of HRD and UGC. The Ministry of Defence is also a part of Central Government and therefore, the NDA and Ministry of Defence are not exempt from policy/orders of Ministry of HRD and regulations of UGC. Therefore, the NDA and Ministry of Defence

cannot adopt different rules or regulations which are inconsistent with the policy orders of the Ministry of HRD and UGC. The UGC regulations have already been adopted by the Ministry of Defence vide letter dt. 02.04.1993. The Ministry of Defence is neither a Competent Authority nor is empowered to deviate from the UGC Regulations and rules of Ministry of HRD. In view of these, the applicant's service rendered earlier with the State Government of Arunachal Pradesh and BITS, Pilani should be counted for pensionary benefits; and

3(d) the applicant has also cited a decision of the Tribunal *in OA No. 473/2013 dt. 16.09.2014 in the case of Dr. Bijay Kumar Barnwal Vs. Union of India & Ors.* holding that guidelines issued by UGC for counting past service for benefits under Career Advancement Scheme should be followed. This decision of the Tribunal was challenged by the respondents in Writ Petition No. 584/2015 along with six other writ petitions. However, these petitions have been dismissed by the High Court order dt. 19.03.2018.

Therefore, the OA should be allowed.

The respondents in their reply, sur-rejoinder and arguments contend that -

3(e) there is no provision in the existing rules governing the service of the applicant as a Civilian Academic Officer of the NDA for counting any of his service for Career Advancement other than regular service rendered with the NDA. Individuals joining the Central Government service after 01.01.2004 are governed by New Pension Scheme (NPS). Since the applicant joined at the NDA in January 2006, he is governed by the New Pension Scheme. After resigning from the State Government of Arunachal Pradesh, the applicant served with BITS, Pilani which was a non-pensionable service. This employment at BITS, Pilani is a clear break in his Government service and therefore, he is not entitled for inclusion under the Old Pension Scheme;

3(f) for granting benefits under the Career Advancement Scheme and pension rules, the Competent Authority for NDA is the Ministry of Defence. Since the Competent Authority

i.e. the Ministry of Defence has not accepted the request of the applicant for considering his previous service with the AP State Government and BITS, Pilani, the NDA is not competent to accept his request. Provisions of the UGC Regulations do not become automatically applicable to the staff of NDA unless they are specifically adopted by the Ministry of Defence and made applicable to the NDA Staff. In order to retain talented faculty, the Career Advacement Scheme of UGC has also been extended to the staff working with NDA but for eligibility under this Scheme at NDA, no previous service is counted and only the regular service rendered at NDA is counted for pay protection, pensionary benefits, etc;

3(g) the applicant was neither holding any lien on his post with the State Government of Arunachal Pradesh nor he joined the NDA immediately after tendering his resignation with the State Government of Arunachal Pradesh. Because of his service with the BITS, Pilani in between, the applicant has already forfeited his earlier service for the

purpose of pension as per CCS Pension Rules, 1972;

3(h) as per Ministry of Defence instructions dt. 19.12.2000, for a Lecturer at NDA to become eligible for placement as Lecturer(Senior Scale), he or she has to complete six years of service with NDA after regular appointment, with relaxation of one and two years for those with M.Phil and Ph.D. degrees respectively. Accordingly, the 6th Screening Committee for Career Advancement Scheme for Lecturers at NDA did not consider the past service of the Lecturers rendered outside of NDA and only the performance and length of regular service of Lecturers with the NDA were considered by the Screening Committee;

3(i) there is no discrimination against the applicant since after the letter from Integrated Defence Services(IDS) Headquarters dt. 25.03.2009, the benefit has not been granted to any other similarly situated faculty member. Only those provisions of UGC regulations related to pay package are applicable to the academic staff of NDA which

have been specifically adopted by the Ministry of Defence from time to time as has been done vide order dt. 12.11.2009 relating to pay scales and Career Advancement Scheme applicable to NDA. This order does not provide for counting of past service for benefit under the Career Advancement Scheme. Therefore, the past service of the applicant cannot be counted for benefit under the Career Advancement Scheme; and

3(j) the NDA is associated with the JNU, New Delhi only for the limited purpose of award of graduate degrees to the NDA cadets and the UGC regulations are not applicable to NDA mutatis mutandis and only such portions of the regulations apply to NDA which have been specifically adopted by the Ministry of Defence. In view of these provisions and stipulations, the OA has no justification and it should be dismissed.

4. Analysis and conclusions :-

4(a) As per UGC notification dt. 24.12.1998, minimum qualifications for appointment of teachers in Universities and colleges and measures for maintenance of

standards have been prescribed (Annex A-9).

Para 7.2 of these Guidelines (page 36) for placement of a Lecturer in Senior Scale, the procedure prescribed is of selection on completion of six years of service after regular appointment, with relaxation of one year and two years, respectively, for those with M.Phil and Ph.D degrees. Such selection is made based on qualifications stipulated under para 7.1.1 & 7.1.4 of those guidelines.

Para 7.1.4 stipulates that the Selection Committee for career advancement shall be the same as that for direct recruitment for each category.

4(b) Since these guidelines/stipulations have been notified by UGC on 24.12.1998, the guidelines contained in earlier letter of 27.11.1990 are of no relevance;

4(c) In this OA, we find that the applicant has taken shifting stand -

(i) In his representation dt. 29.02.2012 (Annex A-15, page 52), he sought condonation of break in his service and counting of his service with the Arunachal Pradesh State Government for pension and protection of pay.

Under item No. 10 (page b) and in Para 8(b) under reliefs in this OA. He has sought counting of both periods of his earlier service i.e. with the State Government of Arunachal Pradesh and with BITS, Pilani.

(ii) In para 9 of his representation dt. 14.02.2011 (page 48), he sought incorporation in the modalities for Career Advancement Scheme of a clause for counting of past service and his upgradation under the Career Advancement Scheme.

(iii) In his representation of 22.04.2013 (page 54), he sought reward for his earlier service of more than seven years with the State Government of Arunachal Pradesh. He has also mentioned an example of one Academic Officer with NDA, who had joined the NDA directly from the State Government of Arunachal Pradesh after tendering his technical resignation and who was under the Old Pension Scheme.

(iv) He sought application of Rule 28 in his case to treat the interruption i.e. the period of his service with BITS, Pilani as service caused by resignation.

(v) In that representation, he also cited Rule 27 of CCS Pension Rules which stipulates that an interruption in the service of a Government servant entails forfeiture of his past service. So it is not clear which reliefs are of higher priority to him. However, we deal here only with the relief sought by him in the present OA.

4(d) Under the UGC Guidelines notified on 24.12.1998 (para 8), for counting of past service it has been mentioned that previous service without any break as a Lecturer or equivalent in a University, college, National Laboratory, or other scientific organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICSR and as a UGC Research Scientist should be counted for placement of Lecturer in a Senior Scale or Selection Grade provided certain additional criteria were satisfied.

4(e) However, the record in the case of the present applicant very clearly establishes that after his resignation from the State Government of Arunachal Pradesh on 31.03.2004 and before joining at the NDA on 17.01.2006 without any doubt there was a

break in his regular service between that with the State Government and NDA. Also as stated in the preceding para in the UGC guidelines the previous service to be counted has been indicated only with Government Organizations.

In case of the present applicant, there was a break in service and during the intervening period, he was not serving with any of the State Government or Central Government Institution or Department. Therefore, as per the CCS Pension Rules, 1972, the applicant forfeited his earlier service with the State Government of Arunachal Pradesh for the purpose of pension and pensionary benefits. So he is not eligible for promotion or upgradation as Lecturer (Senior Scale) based on his past service with the State Government of Arunachal Pradesh, which did not continue till the time he joined at the NDA.

4(f) As submitted by the respondents in their letter dt. 30.04.2013, the applicant himself had applied for and served voluntarily outside the Government and

already received benefit for his past service. Also there is no undue hardship caused to him due to operation of the CCS Pension Rules and no relaxation in those rules is warranted for him.

4(g) The contention submitted by the respondents is correct that the Ministry of Defence order dated 12.11.2008 stipulates the revision of pay scales and Career Advancement Scheme for teachers / Civilian Academic Officers of NDA, Khadakwasla and all stipulations under the UGC regulations on this subject are not automatically applicable to the NDA faculty.

4(h) In the case law cited by the applicant i.e. decision of this Tribunal in *OA No. 473/2013 in Dr. Bijay Kumar Barnwal Vs. Union of India & Ors.* and the High Court decision in W.P. No. 584/2015, the facts were different. In those cases, the applicants had earlier served with Government and without any break, they had joined NDA after tendering technical resignation. However, in the present case, the applicant did not join at NDA directly after tendering technical

resignation from the State Government of Arunachal Pradesh. During the intervening period, he served with BITS, Pilani which is not a Government organization. OA No. 182/1997 decided on 23.04.1997 also related to different facts. There the issue involved was of date of retirement of NDA Academic Staff to be treated on par with the date of retirement under the UGC Regulations.

4(i) In view of these facts, we do not find any merit in the present OA. The submissions of the respondents are justified. As a result, neither the break in service in case of the applicant from 31.03.2004 to 17.01.2006 during the period after his resignation from the State Government of Arunachal Pradesh till he joined at the NDA can be condoned nor his past service with the State Government of Arunachal Pradesh can be counted for his promotion as it already stood forfeited as per the pension rules. Similarly, the past service rendered by the applicant with BITS, Pilani also cannot be counted for his career advancement as Lecturer (Senior Scale) and for pensionary

benefits. Therefore, the respondents cannot allow that service for pensionary benefits. Therefore, the OA deserves dismissal.

5. Decision :

The OA is dismissed. The parties are to bear their own costs.

(R.N.Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

Ram.

