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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2360 OF 2003

New Delhi, this the 10th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Dr.V.K. Bajpai,
Ex-Reader, 4/1 NCERT Campus,
New Delhi.

.....Applicant

(By Advocate : Shri C. Hari Shanker)

Versus

National Council of Educational Research and Training,
Shri Aurobindo Marg,
New Delhi-110016.

.....Respondent

(By Advocate : Ms.Deepa Rai)

O R D E R

This Original Application under Section 19 of the Administrative Tribunals Act, 1985 has been filed by the applicant seeking the following reliefs:-

- "(i) to quash and set aside the impugned letter dated 20.9.02, whereby the respondent has communicated to the applicant the decision to reject his representation,
- (ii) consequent to the grant of relief (i) above, to direct the respondent to revise the pension payable to the applicant by adding, to his qualifying years of service therefor, 5 years, under Note No.1-16/85-C-I, dated 5.9.90, issued by the respondent,
- (iii) consequent to the grant of the above reliefs, to direct the respondent to disburse to the applicant the arrears of pension that would become payable to him, with interest thereon at such rate as this Hon'ble Tribunal deems fit and proper in the interests of justice,
- (iv) to grant costs of this OA to the applicant, and
- (v) to pass such other order or orders as may be deemed fit and proper in the interests of justice."

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2. It is stated by the applicant that he obtained his Master Degree in English in the year 1962 and served as a Lecturer in English at Bhopal Noble's College, Udaipur from 22.8.1964 to 5.9.1975. The applicant admits that this service was not pensionable. He joined respondent organisation - National Council of Educational Research and Training (NCERT for short) on 8.9.1975 as a Lecturer in the Regional College of Education in Bhubaneswar. He was selected in pursuance to the advertisement No.51 (Annexure A-2) wherein the minimum educational qualification for the post of Lecturer was as follows:-

"First Class Master's degree in the subject concerned.

OR

Second Class Master's degree in the subject concerned with three years experience of teaching degree or post-Graduate Classes or at least 3 years experience in Research/Development/ Teaching work in the Council.

OR

Second Class Master's degree in the subject concerned with Ph.D. degree.

Note: In the case of all posts candidates found to be of exceptional merit relaxation of qualifications may be given by the Selection Committee at its discretion."

The applicant claims that while submitting the application in response to the advertisement, he also had mentioned the details of his educational

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qualifications and furnished the details of research work as follows:-

"I have been working on 'Heming way - A Study of His Prose' under Professor Y. Sahai, Head of the English Department, University of Allahabad since Feb. 1972."

3. While giving the details of his activities, he has shown the areas of priorities as follows:-

- "1. Research & Development in education
2. Writing of test books & supplementary reading
3. Teaching aids
4. Teaching methodology including reform of the education system."

4. The learned counsel states that in view of the qualifications possessed at the time of recruitment of the applicant and for his eligibility, he was entitled to pensionary benefits of five years added service for the purpose of counting his qualifying service under Rule 30 of Central Civil Service (Pension) Rules, 1972 which reads as follows:-

"30. Addition to qualifying service in special circumstances

- (1) A Government servant who retires from a service or post after the 31st March, 1960, shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-five years or a period of five years, whichever

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is less, if the service or post to which the Government servant is appointed is one:-

- (a) for which postgraduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and
- (b) to which candidates of more than twenty-five years of age are normally recruited.

Provided that this concession shall not be admissible to a Government servant unless his actual qualifying service at the time he quits Government service is not less than ten years.

Provided further that this concession shall be admissible only if the Recruitment Rules in respect of the said service or post contain a specific provision that the service or post is one which carries the benefit of this rule.

Provided also that this concession shall not be admissible to those who are eligible for counting of their past service for superannuation pension unless they opt before the date of their retirement, which option once exercised shall be final, for the weightage of service under this sub-rule foregoing the counting of past service."

5. Even though the applicant has claimed benefit of pension of notification dated 5.9.1990 by which recruitment rules have been changed, the applicant fulfils the qualifications for the benefit of qualifying service under Rule 30 itself. The Recruitment Rules of 5.9.1990 provide as under:-

"An employee who retires from a post shall be eligible to add his service qualifying for superannuation pension (but not for any other class of pension) the actual period, not exceeding one-fourth of the length of his service

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by which his age at the time of recruitment exceeded 25 years or a period of 5 years, whichever is less.

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits service is not less than 10 years.

Provided further that in case a person had been appointed to another post in the Council or elsewhere prior to his selection as Lecturer/Reader/Professor at an age not exceeding 25 years and service in such post qualifies for pension the above benefit will not be available to him."

6. The applicant was recruited above the age of 35 years and the applicant had rendered more than 10 years of qualifying service in the organisation. Therefore, in terms of the Recruitment Rules of 1990, the applicant was eligible for the additional five years qualifying service for the purpose of counting his pension.

7. Learned counsel invited attention to the minutes of the meeting dated 7.4.1989, a copy of which was placed by the learned counsel of the respondents at the time of hearing wherein it is provided as follows:-

"The Committee has felt that all the academic posts in the Council are of the nature where post-graduate research or specialised qualification or experience in scientific, technological and professional fields are essential at the time of recruitment..... All these are specialised professional fields which require specialised qualifications and (experience). Moreover, for the post of Lecturers, Readers and Professors, candidates of more than 25 years of age are normally recruited on the basis of the guidelines of UGC."

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8. Referring to the qualifications and experience stated in the advertisement before his recruitment with the respondents as well as the details furnished in the application, the learned counsel pointed out that the applicant has eligibility criteria not only as per the recruitment rules notified on 5.9.1990 but also in terms of Rule 30 of CCS (Pension) Rules, 1972. He, therefore, urged that the impugned order refusing to grant benefit of added 5 years of service of pensionary benefits should be quashed and set aside and the respondents be directed to grant the benefit of additional five years of service for pensionary benefits.

9. The learned counsel of the respondents invited attention to the reply filed wherein it has been stated that second proviso to the notification dated 5.9.1990 bans such persons who were appointed to 'another post in the council or elsewhere prior to his selection as Lecturer/Reader/Professor at an age not exceeding 25 years. The Second proviso reads as follows:-

"Provided further that in case a person had been appointed to another post in the Council or elsewhere prior to his selection as Lecturer/Reader/Professor at an age not exceeding 25 years and service in such post qualifies for pension the above benefit will not be available to him."

10. The learned counsel of the respondents further pointed out that the benefit of additional five years qualifying service is to be given to the

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employees of the Council who cannot join before the age of 25 years as they were engaged in the postgraduate research or specialist qualification or experience in scientific, technological or professional fields as provided under Section 30 of the CCS (Pension) Rules.

11. Learned counsel also pointed out that applicant had joined after the age of 25 years and did his research work for Ph.D in the year 1987 after he joined the Council as Lecturer on 8.9.1975. The applicant was not engaged in research work prior to his appointment for three years. Therefore, he cannot be entitled to add the benefit of additional 5 years towards pensionary benefits.

12. Applicant has filed the rejoinder in which it has been stated that the denial of benefit as per notification dated 5.9.1990 was restricted to persons who did not join the post of Lecturer/Reader/Professor before attaining the age of 25 years and were not engaged in research work. The applicant has stated that prior to his being recruited as Lecturer with the respondent on 8.9.1975, the applicant served as Lecturer in Bhopal Noble's College, Udaipur. Learned counsel pointed out that the applicant was actually doing research work before joining the respondent organisation even though he was awarded Ph.D. Degree in the year 1987. Therefore, in the rejoinder, it has been stated that applicant was

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engaged in professional service prior to joining respondent - even assuming, without admitting, that Rule 30 of the CCS (Pension) Rules called for any application at all.

13. The arguments of learned counsel of both the parties have been heard and the material available on record has also been carefully perused.

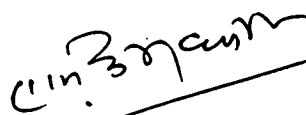
14. The applicant before joining the respondent organisation was Lecturer in English as per details given in the application (Annexure A/3). The applicant was already working on research work since Feb., 1972 and that he has been awarded Ph.D. Degree in 1987. He was also of about 35 years of age when he joined respondent organisation on 8.9.1975. Considering the qualifications and experience of the applicant, it is held that he was eligible for being granted additional five years for calculation of qualifying service in terms of amended Recruitment Rules notified on 5.9.1990. It is also considered relevant to note that respondent has admitted that the normal age for appointment to another post in the Council or elsewhere prior to selection was above 25 years. Therefore, the applicant was not ineligible in terms of the notification dated 5.9.1990. In this view of the matter the rejection of the applicant's prayer on that ground is not justified.

15. So far as the provision of Rule 30 of the rules *ibid* are concerned, it is noticed that there is

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a specific provisions in the rules that such concession will be allowed if there is a provision in the Recruitment Rule. As pointed out earlier, we have noticed that there is a provision in the Recruitment Rules, as notified in 1990, i.e., before the applicant retired on superannuation on 31.3.2002. Therefore, even in terms of provisions of Rule 30 of the Rules ibid, the applicant is eligible for such concession. Accordingly, the impugned order dated 20.9.2002 is quashed and set aside and the respondents are directed to grant the benefit of additional five years of service for the purpose of qualifying service.

16. In the result, OA is allowed without any order as to costs.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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