

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P. No.43/2005 in
O.A. No.2461/2003

New Delhi this the 2nd day of January, 2006

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Shri J.B. Saxena
S/o Late Shri R.B. Saxena,
R/o E-225, Amar Colony,
New Delhi.

-Applicant

(By Advocate: Shri S.K. Bisaria)

Versus

1. Shri S. Raghunathan,
Chief Secretary,
Delhi Secretariat, I.P. Estates,
New Delhi.

2. Shri R.S. Sethi
Principal Secretary,
Department of Training and Technical Education,
Muni Maya Marg,
Pitam Pura, Delhi-110088.

-Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

Hon'ble Shri V.K. Malotra, Vice Chairman (A)

By virtue of OA-2461/2003, applicant had sought direction to count his service from 23.1.1958 to 23.11.1961 while he worked as Drawing Instructor in the Directorate of Training and Employment, State of U.P. for pensionary and retirement benefits and also to consider him for in situ promotion to the next higher grade and to pay him all consequential benefits. This OA was disposed of with the following directions:-

"6. Having regard to the facts and circumstances of the case and particularly the fact that the matter is under consideration of the respondents and also that the State of UP have given their no objection to the period of service rendered by the applicant under them being counted as qualifying service for pensionary purposes, this Original Application is disposed of with directions to the respondents to consider the matter as prayed for by the applicant under the relevant rules and to do the needful within a period of three months from the date of receipt of a copy of this order. No order as to costs".



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2. Through this petition, it has been alleged that respondents have deliberately and with mala fide intention not implemented the directions contained in the Tribunal's aforesaid orders.

3. Learned counsel of the applicant drew our attention to Tribunal's observations that even after a lapse of long number of years, the matter can be considered and disposed of by the respondents. He further pointed out that Tribunal had expressed expectation that "non-availability of information like whether terminal benefits had been paid to the applicant at the time of his technical resignation should not have held back the decision being taken in the matter by the respondents". Tribunal had directed the respondents to take appropriate action within a period of three months.

4. Learned counsel of respondents contended that there has been no deliberate, willful, intentional disobedience of the orders of the Tribunal. As a matter of fact, respondents have done everything within their means to expedite the matter but because of certain action to be taken on the part of the U.P. Government in respect of applicant's past service under the U.P. Government from 23.1.1958 to 23.11.1961, the respondents, herein, have not been able to accord to the applicant benefits claimed. Drawing our attention to Annexure CP R-I dated 12.4.2005 and Annexure CP R-II dated 27.4.2005, learned counsel maintained that it was necessary to ascertain from the Government of UP whether applicant was sanctioned any pensionary benefit and if so, refund thereof. It was stated that though absence of entry in applicant's service book regarding applicant's resignation with effect from 23.11.1961 can be ignored but in terms of Rule-5 of CCS (Pension) Rules, 1972, it was necessary that the State Government must agree to grant of and release of proportionate pensionary liability prior to issuance of PPO. Learned counsel of respondents further stated that they had deputed Mr. Sanjeev Gupta, Office Superintendent (E-I) to go to Lucknow for obtaining necessary information in the matter. He has reported back that the concerned file of the Directorate of Training and Employment of UP Government from which letter dated 15.3.1996 addressed to G.B. Pant

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Polytechnic was issued, was not traceable and further that the State Government staff has been busy in election duty.

5. We have considered the respective contentions.

6. Vide letter dated 28.3.2005, respondents have granted relaxation in respect of the following conditions-

"(i) Approaching Govt. of U.P. regarding transfer of Pension liabilities as the Incumbent was not eligible for any pensionary benefits as he served only for 3 years & 10 months.

(ii) Certification of entry in the service book for verification of service under rule 26(2) of CCS (Pension) rule 1972 as the period is prior to said rule for the counting of past service rendered by Shri J.B. Saxena, Ex.Sr. Drawing Instructor under the Govt. of U.P."

But so far, respondents have not been able to obtain concurrence of the State Government regarding sharing of the pensionary benefits. It is observed that the State Government was not a party in the OA. The inability of the respondents for granting the pensionary benefits to the applicant taking into account the past service of the applicant with the State Government is justified as the State Government has not indicated clearly that they would share the proportionate burden of pensionary benefits in respect of the period for which applicant had served them. The Court could have taken action against the State Government for execution of Tribunal's orders but when they were not a party before us, it is not possible to take action against the State Government at this stage. However, as per Annexure CP R-I dated 12.4.2005, respondents have accorded relaxation to the extent that absence of entry in the service book of applicant's past service with the State Government can be ignored. It means that they can certainly take into consideration applicant's past service for purposes of in situ promotion.

7. Taking into consideration the lack of action on the part of the State Government regarding concurrence for counting applicant's past service from 23.1.1957 to 23.11.1961 with the State Government for pensionary purposes, the contempt proceedings are dropped, however, requiring the respondents to pass a detailed order communicating the reasons for not taking into consideration the past service of the applicant for pensionary purposes. However, they shall take into consideration applicant's past service with the State Government for purpose

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of granting in situ promotion. Respondents are further directed to communicate their orders to the applicant within a period of two months from the date of communication of these orders. Applicant shall have liberty to resort to appropriate proceedings on orders to be passed by the respondents in which he should be able to implead all necessary parties. Notices issued to the respondents are discharged.



(Mrs. Meera Chhibber)
Member (J)

cc.



(V.K. Majotra)
Vice Chairman (A)

20.1.06