

6:6: Service Condition/financial benefits etc.

- (vii) Grant of benefit of added years of service under Rule 30 of CCS pension Rules for Pension.

The 91st EC held on 7.12.96. under Resolution No. EC:91:96:6:6: (ii) considered the recommendation of the Committee constituted by the EC to grant benefit of qualifying pension to NENU employees covered by CURB Rule/ CCS Rule and accepted the recommendation with immediate effect to those retiring after 7.12.96. But applicability with retrospective effect from 30.3.90. legal advise had to be sought.

In this connection the legal advise furnished by Sri S.R. Sen, Legal Adviser, NENU is placed (at Annexure I) Sri S.R. Sen is of the opinion that since the CCS Rules had been duly adopted by the EC in its meeting held on 7.12.96. the same may be applied with date retrospective effect from 30.3.90.

A second opinion was obtained from the University standing Council Sri A.K. Phukan, Sr. Advocate Gauhati High Court (at Annexure II) In his opinion Rule 30 of CCS pension Rules 1972 already stood adopted by the University w.e.f. 11.9.86. As decided by the 68th EC dated 30.3.90. (Annexure- III) although the same was not implemented. Considering the fact that Rule 30 itself extends the benefits with retrospective effect to those retiring after 31.3.60. Sri Phukan does not see any legal impediment in applying the benefits of the Rules to NENU employees retiring after 30.3.90. who are eligible under the rules. Sri Phukan has however opined that the second provisio to kule 30(i) may cause some difficulty in implementation since it lays down that the benefit will be admissible only if the recruitment rules in respect of the concerned service or post contained a specific provision that the service or post is one which carried the benefit of this Rule, as contained in the M.H.R.D. Circular No.F.24(14)/92-IBD dated 16.6.92 (Annexure IV). He has further advised that to overcome this difficulty concerned recruitment Rules may be suitably amended with retrospective effect and would be legally permissible as it is intended to give benefit to the employees, subject to prior approval of U.G.C./Ministry to avoid any future complication. The EC agenda and minuts of 91st EC is placed at Annexure V for perusal.

The matter is placed befor the Council for its decision.

ANNEXURE I

Sunil Ranjan Sen B.A., LL.B.
ADVOCATE, GAUHATI HIGH COURT

Dated 11th December, 1997.

To

The Deputy Registrar(Legal Cell),
NEHU., Shillong.

Ref. : Your letter No.F.DR(LC)Misc/96-97/97-98/3712 dt.16.10.97.

Sir,

Perused the papers submitted in connection with the above matter under reference. Since the CCS Rules have been duly adopted by the Executive Council in its meeting held on 7.12.96, the same may be applied with retrospective effect from 30.3.1990.

Yours faithfully,

Sd/- (.S.R. Sen)Advocate.

ANNEXURE II

A.K. Phookan
Advocate, Gauhati High Court

Zoo-Narangi Road, Gauhati-781021

To

The Registrar,
NEHU., Shillong, Meghalaya.

Subject : Opinion as to whether the provisions of Rule 30 of the C.C.S. (Pension)Rules, 1972, can be made effective retrospectively, i.e. w.e.f. 30.3.90.

Ref. : Your letter No.F.30/Estt.II/82-1156 dt.21.2.98 and Deputy Registrar, Estt. II letter No.F.39/Estt.II/82-49 dt.16.5.98.

Dear Sir,

I have perused the papers you had enclosed with your letter dated 21st February, 1998 concerning the above mentioned subject. After careful consideration of the matter I give my opinion as follows :-

1. I find that the Executive Council of NEHU in its 68th meeting held on 30.3.90 vide Resolution No.EC:68:90:5:01:(vii) resolved inter alia that "the Central Govt. Rules and Orders on GPF and CPF and other pensionary benefits, as may be amended from time to time, be adopted by the University and the benefits be made admissible w.e.f. 11.9.86". Further it was also resolved that the "Additional benefit of qualifying service will be admissible to employees of the University as per the Govt. Rules",. Hence it follows that the CCS(Pension) Rules, 1972, including Rule 30 thereof also stood adopted by the University w.e.f. 11.9.86.

2. However, it appears also that although the University adopted Central Govt. Rules and Orders in regard to CPF, GPF and pensionary benefits, w.e.f.

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11.9.86. vide EC Resolution dated 30.3.90, but Rule 30 was not implemented even upto 1996. Accordingly, Prof. A.C. Sinha requested the matter to be placed as an agenda before the next EC meeting and suggested certain guidelines for implementing the Rule.

3. Subsequently, the EC at its meeting held on 18.7.96, vide Resolution No. EC:90:96:6:6:(i) resolved to set up a three-member committee to go through the suggested guidelines vis-a-vis the Govt. of India Rules. Further, the EC also considered the grant of additional benefit under Rule 30 of the CCS (Pension) Rules and "resolved to accept the Rules of the Govt. of India on a case to case basis". Thereafter, the EC in its meeting held on 7.12.1996 considered the recommendation submitted by the aforesaid committee in regard to granting of the benefit of qualifying service to NEHU employees covered by CURB Rule/CCS Rules and resolved to accept the recommendation with immediate effect to those retiring after 7.12.96. But legal opinion was to be sought regarding retrospective application of Rule 30 with effect from 30.3.90.

4. In my opinion (see Para 1 above) Rule 30 of CCS(Pension) Rules, 1972 already stood adopted by the University w.e.f. 11.9.86 by the earlier Resolution dated 30.3.90 although the same was not implemented. Considering the fact that Rule 30 itself extends the benefits with retrospective effect to those retiring after 31.3.1960, I do not see any legal impediment in applying the benefits of the Rule to the NEHU employees retiring after 30.3.90 who are otherwise eligible under the Rule.

5. However, the 2nd Proviso to Rule 30(1) may cause some difficulty since it lays down that the benefit will be admissible only if the recruitment Rules in respect of the concerned service or post contain a specific provision that the service or post is one which carries the benefit of this Rule. This point has been repeated in the Govt. Circular No.F.No.24(14)/92-IFD dated 16th June 1992 issued by the Ministry of Human Resources Development (Deptt. of Education). This difficulty may be overcome by suitably amending the concerned recruitment Rules with retrospective effect. Such amendment with retrospective effect would be legally permissible as it is intended to give a benefit to the employee. However in this regard prior approval of the UGC/Ministry may kindly be sought so as to avoid any future complications.

Sd/- (A.K. Phookan) Sr. Advocate
Gauhati High Court, Guwahati.

ANNEXURE III

ADDITIONAL BENEFIT OF QUALIFYING SERVICE.

ED:68:90:5:01:(vii) dated 30.3.1990 - Additional benefit of qualifying service will be admissible to employees of the University as per the Government Rules.

F. No.24(14)/92-IFD
Government of India, Ministry of
Human Resource Development
(Department of Education)

New Delhi the 16th June, 1992

Subject : Benefit of added years of service under Rule 30 of the C.C.S.
(Pension) Rules 1972 - instruction regarding.

In accordance with the provisions of Rule 30 of the CCS (Pension) Rule 1972 benefit of added years of service is available to specially qualified or experienced personnel if the service or post to which they are appointed is one- - - -

"(a) for which post-graduate research, or specialist qualification or experience is scientific, technology or professional fields, is essential".

2. In order to ensure that this concession is admissible, it is necessary that 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. Certain other conditions are also laid down in the rules for getting the benefit of this rule.

3. Some of the autonomous bodies under this Department having pension Schemes have also adopted this rule. It has been observed that while adopting this rule some of the autonomous bodies have extended certain unintended benefit of the rule to some services or posts which are not contemplated under the rule referred above.

4. It may be clarified that in terms of Rule 30 of CCS(Pension) Rules benefit of added years of service is admissible only for those posts or those individuals where post-graduate research is an essential qualification. In cases where this is not so, experience of an equivalent level of such length as to justify entry in the service beyond the age of 25 solely on the grounds of acquisition of essential qualification/experience should be essential qualification. Such posts as are having simple post-graduation or post-graduation with experience as the essential qualification are not covered under the provisions of Rule 30, as normally a person completes its post graduation at the age of 22-23 and experience can be attained during service itself.

5. It has, however come to our notice that certain autonomous bodies have allowed this benefit to some of their posts/persons even if simple post-graduation with some experience are essential qualification for that post. In order, therefore, to have uniformity of practice and proper application of the Rule, the above guidelines are circulated to all autonomous bodies to ensure that benefit of Rule 30 of the CCS(Pension) Rule 1972 is allowed only in those cases where post-graduation research or specialised qualification/experience is scientific, technology or professional fields is an essential qualification and this benefit is not extended to such category of posts as are having only post-graduation with some experience as the essential qualifications.

Sd/-(Sudeep Banerjee) Finance Adviser

All the Heads of autonomous organisations (by name) Prof. Barrister Patem, V.C.,
Copy also to all the bureau Heads, Divisional Heads in the Deptts. of Education and Culture.

ANNEXURE IV

Agenda for 91st Executive Council to be held on 7.12.96.

Sub.: Grant of benefits in the form of addition to qualifying service for pension.

The Executive Council in its 90th meeting considered the question of granting benefits in the form of addition to qualifying service in special circumstances and resolved that the relevant provisions in this regard as per CCS (Pension) Rule 30 and the GOI orders issued thereunder from time to time should be followed. The said Executive Council further resolved that a three member Committee under the Chairmanship of Professor R.R. Mishra might be formed "to examine and go through the guidelines suggested vis-a-vis Govt. of India's Rules".

The Mishra Committee in their report recommended the following guidelines for implementation of the provisions of CCS(Pension) Rule 30 vide Annexure 'A' enclosed.

Guidelines:

The categories of employees for whom the additional benefit of service is admissible, the definition of date of entry for this purpose and method of to calculate additional QUALIFYING SERVICE.

All the employees of NEHU covered under CURB or CCS Rules who are in the post to which the condition *namely "Ph.D. or equivalent published research work" in accordance with the CCS Rule 30 is attached as an essential condition will be eligible for the benefit of additional qualifying service.

Definition of the date of entry.

(1) Those who joined NEHU as Professor/Reader as their first job/not as their first job but do not opt for transfer of their earlier services. For them the date of joining NEHU will be the date of entry.

(2) Those who joined NEHU as Professor/Reader not as their first job and opt for transfer of their earlier transferable service rendered elsewhere provided the employee was Professor/Reader on the starting date of the service transferred or the employee was Lecturer on the starting date of the service transferred and the condition *was essential for the Lecturer on the starting date of service transferred.

For him/her the starting date of the service transferred will be the date of entry in such service.

(3) Those who joined NEHU as Lecturer as their first job/not as their first job but do not opt for transfer of their earlier services, provided the condition *was essential for the post of lecturer at the time of their joining NEHU, In such case, the date of joining NEHU will be the date of entry.

(4) Those who joined NEHU as lecturer not as their first job and opt for transfer of their transferable service rendered elsewhere, if the condition *was essential for the post of Lecturer on the starting date of the service transferred and in that case the starting date of the service transferred will be the date of entry into such service.

(5) If the condition *is attached to the post at a date later to the date of joining the post by the employee (i.e. the date of joining NEHU if it is his/her first job or he/she does not opt for his transfer of earlier service; the starting date of the service transferred, in case he/she opts for transfer and if the employee fulfills the conditions *on the date of attachment of such condition to the post, the date of entry be taken as the date of attachment of such condition provided the employee opts to forgo the service prior to that date.

Method of calculation of additional qualifying service and Total Qualifying Service:

- (a) = Date of entry as defined above
- (b) = Date of retirement
- (c) = the period not to be qualified towards actual qualifying service as per rule.
- (d) = actual qualifying service = (period(b-a) - c) years
- (e) = age at the date of entry - 25 years, if it is greater than zero, and zero otherwise.
- (f) = the additional qualifying service = minimum of 5, a and d/4, provided d is at least 10 years.
- (g) = Total qualifying service necessary to calculate pension etc. = will be f + d years or maximum no. of years for full pension, whichever is less

Note. : (1) The Committee recommend that the additional benefit of qualifying service is deemed to have been included in the recruitment rules of NEHU from the inception of the University. This additional benefit will be effective for all the employee retiring after 22.8.90, the date of notification regarding this by the University. However, for future appointments this clause may be added in the advertisement for the post where this is applicable.

(2) The phrase - starting date of the service transferred" used above is illustrated through an example given below :

If NEHU accepts the transfer of service of an employee from December, 15, 1969 to January 20, 1978, then December 15, 1969 will be the starting date of the service transferred.

The guidelines suggested by the Mishra Committee were examined by the office and it was found that the said guidelines do not conform with the orders of the Govt. of India on the subject which are enumerated below for the appraisal of the members -

Weightage of service to overaged recruits in selected services - On the recommendations of the Second Central Pay Commission a concession was introduced for some selected services for which special qualifications are essential and to which candidates of more than 25 years of age are normally recruited. Under this concession, the Government may allow a Government servant who retires from a service or post after the 31st March, 1960, 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 is less. The following are the conditions for the grant of concession :-

- (i) The service or post should be one for which post graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential, and
- (ii) To which candidates of more than twenty-five years of age are normally recruited;
- (iii) The 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;
- (iv) The concession shall not be admissible to any officer unless his actual qualifying service at the time he quits Government service is not less than 10 years.
- (v) The concession shall not be admissible to those who are eligible for counting their past service for superannuation pension unless they opt before the date of retirement to forgo the counting of past service.

The matter is brought to the notice of the members for information. Since we have been following the CCS(Pension) Rules in toto, it may not be wise to violate or disregard the orders of the GOI on the subject. It may invite audit objections from the A.O. (Audit).

Minutes of the 91st EC Meeting held on 7.12.96 - No.EC:91:96:6:6:(xi): The Council considered the recommendation of the Committee constituted by the Executive Council to grant benefit of qualifying service for pension to NEHU employees covered by CURB Rule/CCS Rules and RESOLVED to accept the recommendation with immediate effect to those retiring after 7.12.96. Legal advice, however, may be sought for retrospective application of Rule 30 of the CCS Rule with effect from 30.3.1990.

(vii) Grant of benefit of added years of service under Rule 30 of CCS Pension Rules for Pension.

EC:97:98:6:6:(vii): The Council considered the grant of benefit of added years of service under Rule 30 of CCS Pension Rules for Pension and RESOLVED to constitute a Committee consisting of the following to frame amendments in the recruitment rules for the purpose.

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| 1. Prof. JP Singh | Chairman |
| 2. Prof. SK Mishra | Member |
| 3. Registrar | Member |
| 4. Finance Officer | Member |
| 5. Deputy Registrar(Conference) | Convener. |

(viii) Conversion of Medical Officer's post to that of CMO.

EC:97:98:6:6:(viii): The Council considered the conversion of Medical Officer's post to that of Chief Medical Officer and RESOLVED that clarification be sought from the Ministry of Health & Family Welfare on the qualification required for the post of Chief Medical officer.

(ix) Permanent absorption under Nagaland University in respect of Dr. RP Kachhara, Reader, Deptt. of Geology, Mizoram Campus.

EC:97:98:6:6:(ix): The Council considered the permanent absorption of Dr. RP Kachhara, Reader in Geology by the Nagaland University w.e.f. 16.5.98 and the transfer of his service and RESOLVED to approve the same.

(x) Case of Shri LK Rathore, Work- Charged Junior Engineer in the matter of (a) Settlement of annual increments (b) Consideration of regularisation of service.

EC:97:98:6:6:(x): The Council considered the case of Shri LK Rathore and RESOLVED to refer the matter to the Committee consisting of the following for purpose of regularisation.

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| 1. Prof. AL Verma | Member |
| 2. Prof. SK Mishra | Member |
| 3. Registrar | Member |
| 4. Finance Officer | Member |
| 5. Assistant Registrar(Estt.I) | Convener. |