

**Central Administrative Tribunal
Principal Bench**



MA No.1586/2007

in

OA No.3214/2002 ✓

OA No.462/2008

OA No.61/2009

New Delhi, this the 12th day of February, 2010

**Hon'ble Mr. Justice V. K. Bali, Chairman
Hon'ble Dr. Ramesh Chandra Panda, Member (A)**

1. MA No.1586/2007

in

OA No.3214/2002

Shri Satya Pal Singh Saini, 53 years,
S/o Shri Ram Prasad,
Working as Drawing Teacher,
R/o H. No.337, Meethapur Extn, Part-II,
Delhi 110 044.

.... **Applicant.**

(By Advocate : Sh. A. K. Behera)

Versus

The Administrator
Govt. of NCT of Delhi & Ors.

.... **Respondents**

(By Advocate : Shri Vijay Pandita)

2. OA No.462/2008

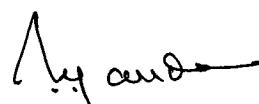
Shri Sohanbir Singh
S/o Late Sh. Dharam Singh
Working as TGT (Science) in
Govt. Boys Sr. Sec. School, DDA Flats,
East of Lone Road, Delhi-93,
R/o C-995, L.I.G. Flats,
East of Loni Road,
Delhi-93.

... **Applicant.**

(By Advocate : Sh. Yogesh Sharma)

Versus

1. Govt. of NCT of Delhi through



The Chief Secretary
New Sectt., New Delhi.



2. The Director of Education
Govt. of NCT of Delhi,
Old Sectt. Delhi.
3. The Deputy Director of Education
Govt. of NCT of Delhi,
B-Block, Yamuna Vihar,
Delhi.
4. The Principal
Govt. Boys Sr. Sec. School,
DDA Flats, East of Loni Road,
Delhi-93.

.... **Respondents.**

(By Advocate : Mrs. Renu George)

3. OA No. 61/2009.

Smt. Vanita Malhotra Khanna
W/o Sh. Dinesh Khanna,
Working as TGT (N.Sc.), posted in
Govt. Girls Sr. Sec. School,
Bakner, Delhi-40.

.... **Applicant.**

(By Advocate : Shri Yogesh Sharma)

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary,
New Sectt.,
New Delhi.
2. The Director of Education
Govt. of NCT of Delhi,
Old Sectt.,
Delhi.
3. The Vice Principal
Govt. Girls Sr. Sec. School,
Bakner,
Delhi-40.

.... **Respondents .**

(By Advocate : Sh. Ram Kanwar)

: O R D E R :

Dr. Ramesh Chandra Panda, Member (A) :

In these three cases, there is a common issue of law viz if the appointment is made retrospectively whether the employee will be entitled to notional pay fixation and seniority with retrospective effect.

All these 3 Applicants were in the select Panel of the same year (June 1984); drawn by the same Respondents. In view of these common factors and with the consent of the Counsel for the parties, we pass a common order for all these cases.

2. The Applicant (Satya Pal Singh Saini) who was appointed as a Drawing Teacher with the Respondent agitated before this Tribunal in OA No.3214/2002, which was decided on 20.11.2003 in which order, it was directed that the Applicant was entitled to the benefit of fixation of notional pay as was accorded in the case of Sohanbir Singh (the Applicant in OA No.462/2008) vide order dated 30.04.1998 and to grant them all consequential benefits including the arrears of pay and allowances. Since the Respondents have not implemented the direction of this Tribunal order dated 20.11.2003, the Applicant has moved the MA No.1586/2007 in OA No.3214/2002 seeking this Tribunal's intervention to direct the Respondents to implement the said order.

3. In OA No.462/2008, Sohanbir Singh, who is working as Trained Graduate Teacher (Science) is the Applicant and has come up before this Tribunal impugning the letter of the Respondents dated





18.02.2008 (**Annexure A/1**) whereby recovery of as per his case wrongly fixed salary in respect of the Applicant has been ordered. He has prayed to quash and set aside the said order dated 18.02.2008 and to declare that the Applicant was entitled to all consequential benefits including the refund of the recovered amount.

4. In **OA No.61/2009**, the Applicant is Smt. Vanita Malhotra Khanna who was appointed as TGT, (Natural Science) and has assailed the order of Government Girls Senior Secondary School dated 27.12.2008 whereby her pay was fixed in a manner by which recoveries of over payment was ordered. She has challenged the said order and prayed to quash and set aside the same and to grant her all consequential benefits including the refund of recovered amount to the Applicant.

5. In all these 3 cases, the facts being common, we would refer here briefly the relevant facts which would be necessary for adjudicating the issues involved. To fill up the vacancies of Trained Graduate Teachers (TGT), the Respondent-Delhi Administration sought the names of suitable candidates from the Employment Exchange up to June 1984 and the Employment Exchange sponsored 4000 candidates. The Staff Selection Board after interviewing the candidates prepared a panel of 1492 selected candidates, and the said list was displayed specifying that the appointment would be in order of merit and would be made in the select list till the last candidate was appointed. It was also stated in the Minutes of the said Selection Board Meeting that the life of the panel

would be valid for indefinite period and the panel would remain valid till the last candidate was appointed. In two spells Delhi Administration appointed 527 and 127 candidates from the said panel. It is stated that more candidates were selected than the number of vacancies accrued in Delhi Administration. The issue of the candidates in the panel but not appointed by the Respondents came up before the Tribunal. The prayer was for the Tribunal to direct the Respondents to ensure that all those who were not appointed from the panel their interest should be protected and they should be appointed in the vacancies then available for finalization of the panel of selected candidates. At that point of time, the Tribunal observed that if the actual number of vacancies was only 654 as notified to the Employment Exchange the Selection Board headed by the Director/Additional Director of Education would have prepared only those number of candidates but on the other hand, they prepared unduly large/inflated number of selected candidates in the said Panel numbering 1492. It was also stated that the Panel was alive and entire list was not exhausted but a fresh advertisement was issued by the Respondent - Delhi Administration inviting fresh applications from the candidates for further appointment. Considering the entire matter, the Tribunal allowed the OA and quashed the letter dated 5.3.1985 restricting the number of selected candidates in the panel to the number of actual notified vacancies and directed that the candidates already in the select panel of June 1984 would be appointed against the existing or future vacancies and the persons in the said panel would have precedence in an

My cause

appointment over persons included in any subsequent panel and not so far appointed and further that no fresh panel for the appointment could be made. The Respondent – Delhi Administration assailed the order of the Tribunal and the matter came before the Hon'ble Supreme Court in **Union of India and Others versus Ishwar Singh Khatri and Others** (Civil Appeal No.1900/1987) and the following judgement was passed on 07.08.1989:-

“..It is against this order of the Tribunal, Delhi Administration by obtaining leave has appealed to this Court.

Mr. Subba Rao for the appellant urged that the candidates included in the panels prepared by the Selection Board as far back in June 1984 cannot be held to have the right to appointment against vacancies arising subsequent to preparation of the panels. According to counsel, if that right is conceded it would be arbitrary and contrary to Art 16 (1) of the Constitution which guarantees opportunity for all citizens in matters of employment or appointment to any office under the State. There is little doubt about this proposition. The selected candidates ordinarily will have a right to appointment against vacancies notified or available till the select list is prepared. They in any event cannot have a right against further vacancies less such future. But in the present case, it cannot be said that the anticipated vacancies arising upto the preparation of panels were not taken into consideration by the Selection Board while preparing the panels for recruitment. The Tribunal after examining the entire matter has concluded that the selection board headed by the Director of Education or the Additional Director on a few occasions was aware of the number of vacancies then available for finalizations of the panels of selected candidates. The Tribunal observed:

“We do not think that there can be a person other than the Director of Education himself who would have been in a better position to know the number of existing and anticipated vacancies of T.G.T. required to be filled up in the Education Department. It does not stand to reason that if the number of actual vacancies was only 654 as notified to the Employment Exchange, the Selection Board headed by the Director/Addl. Director of Education would have prepared unduly large or inflated panels of selected candidates numbering 1492. If the number of actual and anticipated vacancies was disproportionately less than the size of the panels, the Selection Board could also not have recorded in the minutes as follows:-

Appendix

"The panel of the selected candidates will be valid till all the candidates are offered appointments.

In fact we wanted to ascertain the actual number of vacancies that existed as on the preparation of panels of the selected candidates. We requested Mr. Subba Rao, counsel for Delhi Administration to find out and inform us about the actual fact. Counsel although took time to verify, finally pleaded his inability to furnish the required particulars. Therefore, in the premises we have to conclude that the Selection Board prepared the panels containing 1492 candidates as against the then available vacancies. In view of this conclusion, it goes without saying that the selected candidates have a right to get appointment. We, therefore, see no reason to disturb the judgment of the Tribunal.

It is made clear that the Administration shall fill up all the existing vacancies within one month from today till the panels in question are exhausted. With this direction, the appeal is disposed of. In the circumstances of the case, there will be no order as to costs.

Before parting with the case we must notice one other aspect. During the pendency of the proceedings before the Tribunal and also in this Court, Delhi Administration appears to have appointed some fresh candidates. We do not want to disturb their appointments nor it is proper for Delhi Administration to disturb them. Needless, however, to state that the candidates in the panels when appointed pursuant to our order must get their seniority as per their rankings in the select panels over the persons appointed in the interregnum."

6. We have heard Shri A. K. Behera, learned Counsel for the Applicant and Shri Vijay Pandita, learned Counsel for the Respondents and with their assistance we have perused the pleadings as well.

7. The above judgment of the Hon'ble Apex Court is final on the controversy and binding on all the parties. In the context of the Applicants in the current cases the following decisions in the judgment are relevant :-

My answer



- * The selected candidates in June 1984 panel have a right to be appointed. All these 3 Applicants have been appointed by Delhi Administration.
- * It was noted that the Respondents appointed some more persons when the Civil Appeal was pending before the Hon'ble Supreme Court. Therefore, the judgment of the Hon'ble Apex Court is clear about the seniority of the persons in the panel of June, 1984. Direction of the Hon'ble Apex Court was "the candidates in the panels when appointed pursuant to our order must get their seniority as per their ranking in the select panels **over the persons appointed in the interregnum**" (emphasis added by us)

8. Thus the only question of law in these cases which remains to be determined is - whether an employee would be entitled to fixation of pay retrospectively on notional basis on being granted appointment to a post retrospectively. In this matter, the issue is fully covered by the order of the Full Court of this Tribunal in OA No.536/2007 in the case **Smt. Deepti Arora vs. Govt. of NCT of Delhi & Ors.** which was decided on 11.12.2009. The ratio laid in the cases is as follows :-

2. In Telecommunication Engineering Service Association (supra), the Supreme Court considered the order of this Tribunal in Review Application No.195 of 1992 in OA No.2667 of 1991 in which the issue of payment of back wages and notional fixation of pay on the re-fixation of inter-se seniority had been considered. The Supreme Court upheld the Tribunal's decision "that in the event of refixation of seniority and notional promotion with retrospective effect, they would be entitled only to refixation of their present pay which should not be less than that of those who were immediately below and that they would not be entitled to back wages." (emphasis ours)

3. The reference was necessitated because even after these judgements of the Honourable Supreme Court, which were reiterated in **State of Haryana and others Vs. O.P. Gupta and others**, (1996) 7 SCC 533 and **Hargovind Yadav Vs. Rewa Sidhi Gramin Bank and others**, (2006) 6 SCC 145, the learned Coordinate Benches of this Tribunal passed several orders, e.g., in **Mrs. Nirmala Gupta & Others Vs. the Lt. Governor-**

My answer

cum-Administrator of Delhi & Others, OA No.569/1996, decided on 18.01.2000, Karan Priya Gautam & Ors. Vs. Government of NCT of Delhi & Ors., OA No.2618/2005, decided on 30.10.2006, Ms. Rita Tara Vs. The Director of Education, Government of NCT of Delhi & Ors., OA No.2154/2005, decided on 17.07.2007 and Shashi Aggarwal and Another Vs. Secretary, D.S.S.S.B. and others, OA No.203/2006 decided on 12.10.2006. The common strain in all these orders is that any such employee, adverted to in the reference order, would not be eligible for re-fixation of pay on appointment or promotion to a post on retrospective basis. We shall quote here the observation of a Bench of this Tribunal in Shashi Aggarwal (supra), which is as follows:

“..... by no stretch of imagination can it be said that applicant would be entitled for grant of back wages or fixation of pay even before she finally joined the job She cannot claim fixation of pay from an earlier date.” (emphasis added)

4. In view of the ratio laid down by the Honourable Supreme Court categorically, we are of the opinion that on retrospective appointment or promotion, the employee would be entitled to re-fixation of pay on notional basis. The reference is answered thus.”

9. The issue of refixation of pay on notional basis from the date of retrospective appointment has been decided in the above order. All these three cases we, therefore, find are fully covered by the above judgment. In view of the Hon'ble Supreme Court judgment in **Ishwar Singh Khatri case (supra)**, and this Tribunal Full Court judgment in **Smt. Deepti Arora case (supra)** the Applicants are entitled to their appointment retrospectively along with consequential seniority and refixation of pay on notional basis.

10. Having considered the total facts and circumstances of the cases; and having been guided by the legally settled ratio in the matter, and in view of our detailed analysis of the issues, we come to the conclusion that the Original Applications have merits and are

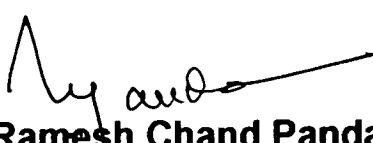
My ans



allowed. In the result, the following directions are issued to the Respondents to consider the cases afresh in view of our above observations and pass specific, appropriate and separate orders in case of each Applicant :-

(i) The pay of the Applicant shall be re-fixed notionally from the date of retrospective appointment. (ii) To grant the increment notionally for each year thereafter till the date of Applicant actual joining the post. (iii) Though no back pay and allowances from the retrospective date of appointment upto the actual date of joining would be admissible but the basic pay of the Applicant as on the date of joining would be worked out on the basis of (i) and (ii) above. The consequentially admissible arrears of pay and allowances would be paid to the Applicant. In case, there was recovery, the same would be re-examined in the light of our order and necessary action taken. (iv) The seniority of each Applicant would be maintained as per the merit/rank obtained in the Panel of June 1984.

11. Let a copy of this order be placed in each of the OAs. In view of the typical nature of the case, the respective parties will bear their own costs.


(Dr. Ramesh Chand Panda)
Member (A)


(V.K. Bali)
Chairman

/pj/