

38

**Central Administrative Tribunal  
Principal Bench, New Delhi**

R.A.No.98/2011 in O.A.No.2240/2002

Order reserved on 4<sup>th</sup> day of April 2012

Order pronounced on 12<sup>th</sup> day of April 2012

**Hon'ble Shri M.L. Chauhan, Member (J)  
Hon'ble Dr. Ramesh Chandra Panda, Member (A)  
Hon'ble Dr. Dharam Paul Sharma, Member (J)**

1. The Chief Secretary  
Govt. of NCT of Delhi
2. The Director of Education  
Directorate of Education  
Old Secretariat, Delhi-54
3. Union of India  
Through Secretary  
Ministry of HRD  
Shastri Bhawan, New Delhi

.. Review Applicants

(By Advocates: Smt. Avnish Ahlawat and Shri N K Singh)

Versus

1. Smt. Sara Verma  
W/o Shri Raj Kumar Verma  
SKV No.2, Palam Village  
New Delhi
2. Late Shri R C Katoch  
Through legal heirs
  - (a) Seema Rana Katoch
  - (b) Puru Katoch  
R/o B-202, Sector 5, Plot No.21  
Himachal Apartments Dwarka  
New Delhi

.. Respondents

(By Advocate: Shri Puneet Taneja)

**O R D E R**

**Shri M. L. Chauhan:**

The present review application has been filed by the original respondents pursuant to the order dated 7.2.2011 passed by the High

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Court of Delhi in WP (C) No.1373/2005 whereby the High Court has granted liberty to the respondents / review applicants to file review application against the order dated 14.7.2004 passed by the Full Bench of the Tribunal and order dated 2.9.2004 passed by the Division Bench of the Tribunal whereby the OA was allowed in terms of the reference answered by the Full Bench.

2. It may be stated here that the liberty was granted by the High Court to file review application against the aforesaid order, when the attention of the High Court was drawn to the OMs dated 10.1.1977 and 24.10.1978, which deal with the grant of selection grade to Groups 'C' & 'D' employees pursuant to the recommendations of 3<sup>rd</sup> Central Pay Commission, which were accepted by the Government and also deal as to how many percentage of posts is to be treated in the selection grade category and when a person can become eligible to be considered for appointment to selection grade based upon length of service in original grade but not produced before the Tribunal. It was further observed by the High Court that the matter in controversy cannot be adjudicated without considering the aforesaid two OMs.

3. The review is being sought by the respondents /review applicants on the ground that there is an error apparent on the face of record while deciding the selection grade issue of Yoga Teachers, as the relevant notification of the selection grade has not been looked into and also that there is an error apparent on the face of record when the Court relied upon letter dated 28.7.1993 indicated in the

judgment/order dated 14.7.2004 as it is not an official communication whereas fact of matter is that this was a private communication by Assistant Education Advisor to one Shri Brijender Singh, President, GBTA, Delhi, House No.466, Nangloi, Delhi, thus, could not have formed basis to decide the matter.

4. We have heard the learned counsel for the parties and gone through the material placed on record. Before considering the contentions raised by the review applicants / original respondents for reviewing the aforesaid judgment of the Full Bench and subsequent judgment of the Division Bench of this Tribunal, which has decided the matter on the basis of the reference made by the Full Bench, few undisputed facts may be noticed. It is not disputed that on 7.8.1981 457 posts of Yoga Teachers were sanctioned w.e.f. 1.10.1981. The recruitment rules were framed on 2.9.1981 and first batch of Yoga Teachers was recruited in January 1983. Vide an order dated 24.1.1994, 91 posts of Yoga Teachers in the selection grade were created w.e.f. 1.4.1984.

5. From the material placed on record, it is also evident that OA No.183/1997 was decided by this Tribunal on 6.2.1998 and the Division Bench of this Tribunal in paragraph 4 of the judgment, which has been extracted in paragraph 15 of the judgment of Full Bench dated 14.7.2004, has *inter alia* recorded the following finding:

“..... We are of the considered view that the stipulation of three years of existence of the posts for admissibility of selection grade cannot be viewed in isolation. It will have to be viewed as

a requirement vis-à-vis the teacher is concerned that is to say that after the concerned Yoga Teacher joins the post and completes the probation period and thereafter happens to complete three years of continuous service from the date of appointment, only then she will be eligible for grant of selection grade. There cannot be a magic in the date of 1.4.1984 rather it will have to be related to each individual teacher and to their date of appointments and completion of probation and expiry of three years. In the light of the above said observation we are of the considered opinion that all the petitioners are entitled to selection grade w.e.f. 1.4.1984 or any subsequent date after completion of probation as well as three years continuous service. Respondents shall pass appropriate orders granting selection grade strictly in accordance with the seniority without upsetting their position from the seniority decided on the basis of date of appointment...."

(emphasis supplied)

6. However, on the basis of the aforesaid findings given by the Division Bench of the Tribunal, matter was referred to the Full Bench in the aforesaid OA thereby formulating the following question for consideration:-

"Whether the persons eligible to be considered for selection grade on the ground that they have not completed one year of probation period followed by three years of continuous service thereafter."

7. Ultimately the Full Bench of this Tribunal, without looking into the office memoranda, which deal with the fixation of number of selection grade posts and also stipulate the eligibility criteria, which an employee should have rendered based upon the length of service before he is eligible to be considered for appointment to selection grade, had answered the reference on the basis of clarificatory letter, which clarification was given pursuant to reference made by one Shri Brijender Singh in his capacity as President, GBTA, Delhi, which, according to us, could not have been formed basis to answer the

reference, more particularly, when the Division Bench of this Tribunal in OA-183/1997 has given a categorical finding that before a person can be granted selection grade w.e.f. 1.4.1984 or from any subsequent date such selection grade can be granted after completion of probation period as well as three years continuous service. It is well settled that the Government decision or even an order of the Government cannot infiltrate in the arena, which stand settled by judicial order unless it is set aside by the higher forum. Thus it was not permissible for the Full Bench to declare the decision of the Division Bench as *per incuriam* to the clarificatory letter issued on 28.7.1993, which according to the Full Bench was consonance with the Government letter dated 27.3.1982 as held in paragraph 19 of the judgment. At this stage, it will also be useful to quote paragraphs 24 & 25 of the judgment of the Full Bench, which thus read:-

“24. Respondents have issued clarification on 28.7.1993 clarifying eligibility of selection grade, which is reproduced as under:-

“Subject: Clarification regarding eligibility of Selection Grade.

Sir,

I am directed to refer to your letter dated 4.7.1993, on the above mentioned subject and to say that the Govt. letter dated 27.3.82 is regarding fixation of number of selection grade posts w.e.f. 1.4.1981 on the basis of sanctioned posts and not on the basis of permanent as well as temporary posts as was decided vide letter dt. 4.3.76 w.e.f. 1.1.1973. The order dt. 27.3.82 has no relevance with the length of service required for the grant of selection scales. For further examination of the case, you are requested to quote the cases where directorate of Education have refused grant of selection scale to the teacher on the ground of minimum three years length of service. It may be added that w.e.f. 1.1.86 for the grant of selection scale

minimum 12 years service is required in the Senior Scales."

(emphasis supplied)

25. The aforesaid clarification issued by the Government has clarified that the order dated 27.3.1982 has no relevance with the length of service required. The respondents' plea that the aforesaid order is issued by an unauthorised person has no sanction of law is wrong. To a query to the president, GBTA, the aforesaid clarification has been issued, which is nothing but interpretation of order dated 27.3.1982, which does not speak of length of service. Based on this benefits had already been accorded to the similarly circumstanced. There is no material produced on record that the aforesaid letter has been withdrawn or superseded by the Govt. of India. If the plea of respondents is that by mistake this has been applied then consequential corrective steps are yet to be demonstrated."

8. The letter dated 28.7.1993 has also been annexed with the OA as Annexure A-4. This letter has been addressed to one Shri Brijender Singh, President, GBTA, Delhi, House No.466, Nangloi, Delhi, which portion of the letter has not been extracted while referring to the letter dated 28.7.1993 in paragraph 24 of the judgment. Thus, it was a communication by the Department to the President, GBTA in his private capacity addressed at his residential address.

9. Thus, as can be seen from the findings recorded by the Full Bench in paragraphs 24 & 25 of the judgment, as reproduced above, it is clear that even in the clarificatory letter dated 28.7.1993 it has been mentioned that the Government letter dated 27.3.1982 is regarding fixation of number of selection grade posts w.e.f. 1.4.1981 on the basis of sanctioned posts and not on the basis of permanent as well as temporary posts. This letter dated 27.3.1982 is in modification of the earlier letter dated 4.3.1976, which deals with fixation of number of

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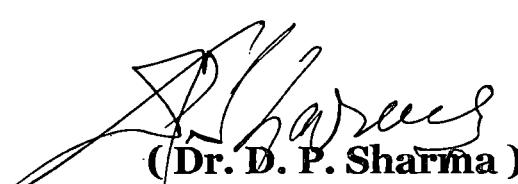
selection grade posts w.e.f. 1.4.1981 and selection grade posts were to be worked out on the basis of 20% of permanent and temporary posts, which have been in existence for three years or more w.e.f. 1.1.1973. Thus, the letter dated 27.3.1982 was regarding fixation of number of selection grade posts w.e.f. 1.4.1981 and the clarificatory letter has also made this position clear and has categorically stated that there is nothing in the order dated 27.3.1982 regarding length of service required for grant of selection scale. The later part of the aforesaid letter further makes it clear that after 1.1.1986 minimum 12 years service is required in the Senior Scales for grant of selection scale. This letter further makes it clear that where the Directorate of Education have refused grant of selection scale to the teacher on the ground of minimum three years length of service, the President, GBTA, Delhi, who has made the reference, was asked to bring such cases to the notice of the Directorate of Education, whereas according to the judgment of the Full Bench, the applicant has been held entitled for selection grade w.e.f. 1.4.1984 when the selection grade posts of Yoga Teacher were created, i.e., within the period of one year as first batch of Yoga Teacher was recruited in the year 1983. Thus even the clarificatory letter makes it further clear that the requirement of three years service is necessary for grant of selection grade. Accordingly, the Full Bench could not have answered the reference in negative based upon the order dated 27.3.1982 read with clarificatory letter dated 28.7.1993, especially when these two letters do not deal with the criteria for eligibility of selection grade and the

letter dated 27.3.1982 was limited to fixation of number of selection grade posts based upon the sanctioned strength w.e.f. 1.4.1981.

10. Thus, according to us, the respondents/ review applicants have made out a case for reviewing the judgment of this Tribunal, as admittedly the clarification as conveyed vide letter dated 28.7.1993 issued by the Department to the President, GBTA could not be termed as any order or policy decision of the Government laying down criteria for eligibility of selection grade and the same could not have been formed basis to answer the reference ignoring the findings given by the Division Bench of the Tribunal in OA No.183/1997, which has been reproduced by the Full Bench in paragraph 15 of its judgment dated 14.7.2004. Thus, there is an error apparent on the face of record, which is required to be reviewed, as admittedly the decision given by the judicial forum cannot be ignored and thus declared as *per incuriam* on the basis of so-called clarification given by the Department to the letter written by the President, GBTA, even if such clarification is treated to be a valid order/decision given by the competent authority, relying on Government letter dated 27.3.1982, which is regarding fixation of number of selection grade posts w.e.f. 1.4.1981 and not regarding eligibility criteria.

11. Accordingly, the review application is allowed and the order of the Full Bench of this Tribunal dated 14.7.2004 is recalled. Similarly, the order dated 2.9.2004 passed by the Division Bench based upon the decision of the Full Bench is also recalled. Accordingly, the OA

No.2240/2002 is restored to its original number and be listed for  
hearing before the appropriate Division Bench.



(Dr. D. P. Sharma)  
Member (J)



(Dr. R.C. Panda)  
Member (A)



(M. L. Chauhan)  
Member (J)

/sunil/

MR (deaf hearing) filed