

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA 2240/2002

This the 7th day of November, 2013

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Mr. P.K.Basu, Member (A)

1. Mrs Sara Verma
W/o Shri Raj Kumar Verma
S.K.V. No.2, Palam Village
 2. Shri R.C.Katoch
R/o 652, GH 5 & 7,
New Delhi
- (By Advocate:Shri Puneet Tajeja)

.... Applicants

VERSUS

1. Chief Secretary
Govt. of NCT of Delhi
2. The Director of Education,
Directorate of Education.
Old Secretariat,
Delhi - 110 054.
3. UOI through
Secretary, M/o HRD
Shastri Bhawan, New Delhi.

.... Respondents.

(By Advocate: Shri N.K.Singh for Mrs.Avnish Ahlawat)

ORDER (ORAL)

Hon'ble Mr.A.K.Bhardwaj,

The applicants in the present Original Application joined the services of Government of Delhi (Directorate of Education) as Yoga teacher in January, 1983. In terms of letter No.F-48-27/71-UT.I dated 26.11.1971, the Government of India, Ministry of Education & Social Welfare decided to place 20% permanent as well as temporary posts in existence for three years or more w.e.f. 1.1.1973 in selection grade. In letter No.A.11014/7/75-UT.I dated 04.03.1976, it was provided as to which category of posts would be included in the aforesaid 20% posts proposed to be placed in selection grade. Nevertheless, initially the

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selection grade was made effective w.e.f.1.01.1973 on the basis of strength as on date. It is the case of applicants that on the basis of the aforementioned letter dated 04.03.1976, as many as 43 Yoga teachers were given selection grade irrespective of length of service rendered by them in ordinary grade. The applicant no.1 filed an additional affidavit narrating the factual position in detail and espousing the chronological events of issuance of various Office Memorandums and grant of selection grade to certain Yoga teachers either by the Department on its own or in implementation of the order passed by this Tribunal. For easy reference the paragraph 2 to 17 of the said affidavit are extracted hereunder:-

"2. That the applicants had filed the abovementioned OA in the year 2002, however, after 7 years of passing of the final order dated 14.04.2004 and 2.09.2004, the respondents had filed a review petition for recalling the said order on the basis of Memorandum dated 10.01.1977 and 24.10.1978. At the out set it is submitted that the said Memorandums have no application to the present case and have never seen the light of day till the filing of the review application. However, lately, after the passing of the order dated 12.04.2012 by the Full Bench of this Tribunal whereby the respondents application for seeking review was allowed, the applicants have been able to lay their hands on office order no.57 dated 20.12.1989 issued by the Directorate of Education, Delhi, in which the respondents had recommended & granted selection grade to 265 similarly situated teachers without following either their more than decade old stand of completion of 1 year of probation and 3 years of service or the newly adopted eligibility criteria as per the Memorandums dated 10.01.1977 and 24.10.1978. Therefore, the applicants are filing the present additional affidavit to place on record the copy of said office order no.57 dated 20.12.1989 issued by the Directorate of Education, which is annexed herewith as Annexure-X. However, the said office order dated 20.12.1989 has also been filed as a stand alone document vide index dated 30.06.2012. To appreciate the value and content of this office order, it is necessary that the applicants point out briefly the facts and as to how the respondent is bent upon in arbitrarily and malafidely depriving the applicants their due credit with respect to selection grade.

3. That Govt. of India, Ministry of Education and Social Welfare vide its order No.F-48-27/71-UT dated 26.11.1971 stated that 15% of the permanent posts of various categories of including TGT's and PGT's were to be treated as selection grade.

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Further the appointment to the selection grade was to be made on the basis of Seniority subject to fitness.

4. That the Government of India, Ministry of Education and Social Welfare vide order no.A-11014/7/75-UT dated 4.03.1976 increased the selection grade posts from 15% to 20% of permanent as well as temporary posts which have been in existence for 3 years or more w.e.f. 1.01.173.
5. That in the year 1982, Govt. issued another order dated 27.03.1982 wherein it was stated that the number of selection grade posts will be fixed at 20% of all the sanctioned posts as on 01.04.1981. The government also decided that this principle will be followed in future also in determining that the number of selection grade posts of teachers.
6. That the posts of yoga teachers were created in the year 1981 and accordingly the first batch of yoga teachers were appointed in January 1983.
7. That vide letter dated 04.03.1987 the respondents had issued final seniority list of Yoga Teacher (Male & Female). In this list, there were 181 male and 294 female yoga teachers in which the deponent was on Sl.No.27.
8. That Govt. of India, Department of Education vide its letter dated 28.07.1983 gave a clarification regarding eligibility for selection grade by stating that the order dated 27.03.1982 has no relevance with the length of service required for the grant of selection grade.
9. That the Directorate of Education on the basis of order dated 27.03.1982 issued letter dated 24.01.1994 (Annexure A-4) in respect of sanction of 91 posts of Yoga teachers in the selection grade w.e.f. 01.04.1984 (36 Male & 55 Female) which was 20% of the total of 455 senior yoga teachers posts sanctioned.
10. That vide letter dated 28.01.1994 the respondent asked for the ACR folders of 32 general and 6 SC male yoga teachers and 55 General and 4 SC female yoga teachers. However, it is pertinent to mention that in the said list of 28.01.1994, the names of the applicants was not shown as the said list was prepared on the basis of old seniority list. Whereas on the basis of seniority list dated 4.03.1987, the applicant no.1 was at Sr.No.27 of the female category and applicant no.2 at Sr.no.32 of male category.
11. That vide letter dated 28.01.1994 the respondents asked for the ACR folders of 32 General and 6 SC Male Yoga Teachers and 55 General and 4 SC Female Yoga Teachers along with the vigilance clearance. It is pertinent to note that the aforesaid letter was issued on the basis of the old seniority list and the petitioner was not mentioned in this said letter.

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12. That as the school/department had failed to send the ACR folders of all the candidates, the Directorate of Education vide order dated 3.03.1994, granted 18 male & 18 female Yoga Teachers selection grade w.e.f. 1.01.1984 without keeping period of service as a criteria. The said letter itself states that the rest of candidates could not be granted the selection grade because their ACR's could not reach the DPC in time. Although it was the responsibility of the respondent that the ACR's of the applicants and other teachers should be made available with DPC in time, but not doing so severe prejudice was caused to the interest of applicants. According to the Respondent No.1&2, the same was not done on account of mistake and not on account of applicant or other teachers not meeting any alleged eligibility criteria.

13. That some Male & Female Yoga Teachers filed OA No.240/1996 seeking selection grade and the same was disposed off with a direction to the respondents to consider these applicants whose juniors have been granted the scale. As a result, 7 Yoga Teachers were granted the selection grade in OA No.240/1996 vide order dated 21.11.1996 without imposing any condition of period of service as a criteria.

14. That another application being OA no.183/97 by 12 nos of yoga teachers titled Deepa Choudhary & Ors Vs. Govt. of NCT Delhi was filed before the Principal Bench, CAT where the respondents for the first time took the plea of completion of one year of probation and 3 years of continuous service as a condition precedent for the grant of selection grade. The said application was disposed of vide order dated 6.02.1998 with the observation that the said applicants are entitled to the selection grade w.e.f. 1.04.1984 after completion of probation as well as three years of continuous service.

15. As out of the 91 sanctioned selection grade posts, 48 posts were lying vacant, vide letter dated 12.11.1993 the government of National Capital Territory of Delhi asked for the ACR from Dy. Director of Education (hereinafter named as DDE) of concerned zone for the grant of selection grade to yoga teachers. In the said list, Mr. R.C.Katoch, who is the applicant no.2 in this O.A. was at Sl.no.9.

16. That again vide letter dated 03.08.1999 the government of National Capital Territory of Delhi (hereinafter named as GNCTD) asked for the ACR's of yoga teachers and in which list, Ms. Sara Verma, the applicant no.1 was at Sl.no.3 in the list of Female Yoga Teacher and Shri R.C.Katoch was at Sr. no.4 in the list of Male Yoga teachers.

17. That response to the above mentioned letter dated 3.08.1999 of respondent, the Principal of the concerned Sarvodaya Vidyalaya, sent a letter dated 16.08.1999 stating that the ACR folder of Smt. Sara Verma stands already sent vide letter dated

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24.10.1998. It is pertinent to mention that in none of the letters, the respondent had imposed any condition of completion of 1 year of probation and 3 years of service or any other length of service as a condition precedent to the grant of selection grade."

2. The present Original Application filed by the applicants seeking issuance of direction to the respondents to grant them selection grade on the ground that the same has been granted to other similarly situated persons was allowed by this Tribunal in terms of the order dated 2nd September, 2004.

3. Nevertheless, the respondents (Directorate of Education) preferred WP(C) 1373/2005 questioning the said order, which was disposed of by the Hon'ble High Court with the following order :-

"This is an application by the petitioner/applicant to take on record the office memorandum dated 10th July, 1977 and 24th October, 1978. The applicant has contended that the abovenoted office memorandum are relevant, however, no ground for not producing them earlier before this Court or before the Tribunal have been disclosed in the application.

In any case the validity of the order of the Tribunal cannot be adjudicated on the basis of these office memorandum which were not before the Tribunal and which had not been considered while passing the order dated 14th July, 2004 and 2nd September, 2004 in OA No.2240/2002.

In the circumstances, the learned counsel for the petitioner on instructions seeks to withdraw the petition and the application with liberty to seek review of the order dated 14th July, 2004 and 2nd September, 2004 before the Central Administrative Tribunal, Principal Bench, New Delhi on the basis of abovenoted office memorandums.

In the circumstances, the Writ Petition is dismissed as withdrawn with the liberty as prayed for. No order about costs".

4. As a result, the respondents filed RA No.98/2011 seeking review of the order dated 14th July, 2004 passed by the Full Bench in the present Original Application itself, taking the view that in view of clarification dated 28.07.1993, the length of service in ordinary grade has no relevance before placing a Yoga teacher in selection grade to the

extent of 20% of the total sanctioned strength, the DB passed order dated 02.09.2004 in the OA (ibid).

5. Finally, in RA No.98/2011, the Full Bench recalled its earlier order dated 14th July, 2004 and took the view that the letter dated 27.03.1982 pertains to the procedure of placement of 20% of sanctioned strength from ordinary grade to selection grade. For easy reference, para 8 to 11 of the order dated 12th April, 2012 of the Full Bench are extracted below:-

"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 28.07.1993 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, we 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 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 sanction 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."

6. It is in the aforesaid circumstances, the present OA has come up for fresh disposal. Mr.Puneet Taneja, learned counsel for the applicant made reference to letter No.A.11014/7/75-UT-I dated 4th March, 1976, letter No.9-5-42/82-Sch.6 dated **27th March, 1982** and **letter No.F-5-0/93-UTI dated 28th July, 1993** to contend that since sufficient number of vacancies in selection grade within 20% quota were available at the time of appointment of the applicant, irrespective of service rendered in the ordinary grade, they should have been placed in the selection grade.

7. On the other hand, Shri N.K.Singh, learned proxy counsel for the respondents submitted that in view of clarificatory OM dated

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10.01.1977, the applicants could not have been placed in the selection grade before completing 3/4th of the span of the revised scale of Ordinary Grade inclusive of service rendered in the pre-revised scale subject to a minimum of 14 years of service. In rejoinder, Mr. Taneja submitted that 42 Yoga teachers granted selection grade had not even completed the period of probation for less three years of service or in the ordinary grade and thus the applicants cannot be meted out discriminatory approach. Relying upon the judgment of the Hon'ble Delhi High Court in **Union of India & ors Vs. Dharam Vir Singh, A.K. Sharma & ors.**, 188 (2012) Delhi Law Times 445 (DB), Mr. Taneja submitted that either the applicants should also be granted selection grade from the date of availability of the vacancies under 20% quota irrespective of the length of service rendered in ordinary grade or the benefits given to those who did not fulfill the conditions made in OM dated 10.01.1977, should be withdrawn.

8. We have heard the counsel for the parties. In view of the interpretation of letter dated 20th July, 1973, gives by Full Bench which is binding on us and the OM dated 10.01.1977, it is clearly established that in order to become eligible for grant of selection grade, one should complete 3/4th of the span of the revised scale of Ordinary Grade inclusive of service rendered in the pre-revised scale subject to a minimum of 14 years of service. The said provision was further clarified by OM dated 24th October, 1978 which reads as under :-

"The undersigned is directed to refer 1 (V) if the Ministry's OM of even number dated 10.1.1977 prescribing the conditions for eligibility for appointment to the selection grade. Certain Ministries/Departments have sought clarification in regard to the question whether an employee who has covered 3/4th of the span of the ordinary Grade will have to wait for completion of 14 years service to be eligible for the grant of selection grade.

When the recommendation of the Third Pay Commission in Paras 51-53 of Chapter 8 of their Report was discussed in the

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Anomalies Committee of the National Council, the Staff side pointed out that the recommendation that the Selection Grade should not be granted to an employee until he has covered, three fourths span of the revised scale would be disadvantageous to the employees in Group 'C' & 'D' because in the matter of fixation of pay in the revised scales, on the recommendation of the Third Pay Commission, point to point fixation was not resorted to. It is in this context that the provision in para 1(v) of this Ministry's OM of even number dated 10.1.1977 was made and the stipulation regarding 14 years service was incorporated because service in the pre-revised scale of pay of the Ordinary Grade will be eligible for the grant of selection grade, even if he does not fulfill the length of service criterion mentioned in para 1 (v) *ibid*.

In so far as persons serving in the Indian Audit and Accounts department are concerned, this clarification issued after consultation with the controller and Auditor General of India."

9. In view of the aforementioned OM and the clarification of the letter dated 20th July, 1973, we find no force in the plea of the applicants that they were entitled to selection grade irrespective of the fact that they had not completed 3/4th of the span of the revised scale of Ordinary Grade inclusive of service rendered in the pre-revised scale subject to a minimum of 14 years of service. As far as the plea of granting benefits of selection grade to 43 Yoga teacher in disregard of the conditions contained in clause 5 of OM dated 10.01.1997 is concerned, we are confident that there is no negative principle of equality. Relevant excerpt of the judgment in [**Union of India Vs. M.K.Sarkar**, (2010) 2 SC 50] read as under :-

"25. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction on courts for perpetuating the same irregularity or illegality in their favour also, on the reasoning that they have been denied the benefits which have been illegally extended to others. See: Chandigarh Administration vs. Jagdish Singh - 1995 (1) SCC 745; Gursharan Singh & Ors. vs. New Delhi Municipal Committee & Ors. - 1996 (2) SCC 459; Faridabad C.T. Scan Centre vs. Director General, Health Services - 1997 (7) SCC 752; State of Haryana vs. Ram Kumar Mann - 1997 (3) SCC 321, State of Bihar & Ors. vs. Kameshwar Prasad

Singh & Anr. - 2000 (9) SCC 94 and Union of India vs. International Trading Company - 2003 (5) SCC 437.

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may be not entitled to the relief has been given relief illegally is not a ground to grant relief to a person who is not entitled to the relief."

10. In the circumstances, we are not inclined to give any positive direction to respondents to grant selection grade to the applicants from the date the vacancy within 20% quota became available. Nevertheless, it would be open to respondents to take a decision in view of the Judgment of Hon'ble Delhi High Court in UOI vs. Dharam Vir Singh (supra). With the above observations, the OA is disposed of.

No Cost.

(P.K. Basu)
Member (A)

(A.K. Bhardwaj)
Member (J)