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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 3064/2002

New Delhi, this the 27th day of June, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairmann
Hon'ble Shri Govindan S.Tampi, Member(A)

Dr. C.L. Meena,
S/o late Shri Nand Lal Meena
R/o A-107, Pandara Road,
New Delhi-3

.. Applicant

(By Advocate: Shri Arun Bhardwaj)

versus

1. Govt. of NCT of Delhi through
The Chief Secretary,
Players Building ITO
New Delhi-2
2. Principal Secretary
Department of Technical Education
Govt. of NCT of Delhi,
Muni Maya Ram Marg,
Pitampura, New Delhi
3. Principal
College of Art,
20-22, Tilak Marg,
New Delhi

.. Respondents

(By Advocate: Shri Ashwini Bhardwaj, proxy for
Shri Rajan Sharma)

ORDER

Justice V.S. Aggarwal

Applicant (Dr.C.L.Meena), by virtue of the present application, seeks a direction for grant of two advance increments in the pay scale of Rs.12000-420-18300 from 1999 when he acquired Ph.D degree and further to fix his pay at Rs.14940 in the pay scale of Rs.12000-420-18300 from 1.1.1996 and for payment of arrears as a consequential relief. He further seeks that his case should be forwarded to the Delhi University for recognition as a Reader as he possesses the required qualifications.

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2. Some of the relevant facts for disposal of the present application are that the applicant worked as a Senior Artist in the University of Udaipur. He was selected by the Union Public Service Commission as Senior Artist in the Ministry of Health and Family Welfare. During the years 1979 to 1987, he worked as a Lecturer in the College of Art, Delhi University. It is being run by the Department of Training and Technical Education. From 1.1.1988, he was promoted under the Merit Promotion Scheme to the post of Assistant Professor/Reader in the Department of Applied Art, College of Arts, New Delhi and he continued to work as such till the application was filed. In the year 1999, he was awarded the degree of Ph.D.

3. Applicant contends that on 10.10.1994, the Principal of College of Art had written to respondent No.2 that since the applicant had completed 8 years of required regular service as Lecturer on 29.3.1987, he has become eligible for grant of benefit under the Merit Promotion Scheme for the post of Assistant Professor. On 17.10.1997, on the recommendations of the Fifth Central Pay Commission, the pay of the applicant was fixed in the pay scale of Rs.12000-375-18000 instead of Rs.12000-420-18300. His pay was fixed at Rs.12,750/- instead of Rs.14,940/- with effect from 1.1.1996. According to the applicant, the same has not been done correctly. In addition to that, it is contended that the applicant had not been given the benefit of All India

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Council of Technical Education (for short AICTE) scale nor the recommendations so given are being followed in this matter. The applicant is entitled to two increments in pursuance of the recommendations of AICTE. Hence the present application.

4. The application as such is being contested. It has been pointed that the applicant is seeking grant of two advance increments in the pay scale of Rs. 12000-420-18300 from 1999 when the AICTE announced the scheme of pay revision and other service benefits. The scheme has not been implemented as yet. The State Government has not accepted the same. The implementation of revised scales will be subject to acceptance of all the conditions as a total package and, therefore, the question of grant of two advance increments when the applicant was awarded the Ph.D. degree does not arise. As regards forwarding of his case to Delhi University for treating him as a Reader, it has been pointed that it needs to be mentioned that the nomenclature of the post in College of Art is not that of a Reader but the equivalent post is that of an Assistant Professor which he has already been designated. There is no post of Reader in the College of Arts.

5. It has further been pleaded that the recommendations of the Fifth Central Pay Commission have been implemented. The benefit of the same has been extended to the teachers of College of Arts. The

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teachers of College of Arts are Government servants and cannot have the same benefit as teachers of Delhi University.

6. The applicant quoted certain other instances where the increments had been granted to which the respondents' reply is that those persons had been given increments on basis of the recommendations of Dogra Committee in September 1991. Dr. Mrs. H. Popli was Ph.D before joining the College of Pharmacy and accordingly Dogra Committee recommendations were extended to her. The Ph.D of Dr. Popli was also in the relevant field for which she was appointed. So far as the applicant is concerned, the department has yet to examine whether the Ph.D is in the relevant field and the benefit of advance increment can be extended to him or not. It is insisted that the structure of staff in College of Arts is different than the structure in Delhi University.

7. During the course of arguments, the learned counsel for the applicant strongly relied upon a decision of the Delhi High Court in the case of **Sanjiv Lochan Gupta & Ors. v. Govt. of NCT of Delhi & Ors.** in Civil Writ Petition No. 1613/2001 rendered on 16.3.2002. In the opinion of the learned counsel, the said decision covers the controversy of the applicant because according to him, the recommendations of the AICTE are binding and, therefore, once it was so held even by the Delhi High Court, the applicant should be granted the said benefit.

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8. We have carefully gone through the decision rendered by the Delhi High Court in the case of Sanjiv Lochan Gupta (supra). Therein Shri Sanjiv Lochan Gupta and others were First Class Graduates in Mechanical, Automobile, Electronics and Industrial Engineering. They had joined as Lecturers on different dates. An advertisement was issued by the Union Public Service Commission for various posts in Polytechnics based on qualifications laid down in the recruitment rules. It was not in dispute that in terms of a notification communicated to all concerned, the AICTE laid down the minimum qualification for the posts of teachers, librarians and physical education personnel. One of the questions before the Delhi High Court was as to whether pertaining to the education standards, the said decision of the AICTE would be a binding or not. The Delhi High Court relied upon the decisions of the Supreme Court in the case of **Medical Council of India v. State of Karnataka & Ors.**, (1998) 6 SCC 131 and **State of Tamil Nadu & Anr. v. Adhiyaman Educational and Research Institute & Ors.**, (1995) 4 SCC 104 and concluded that just like the decision in the case of Medical Council of India (supra) is binding so would be the qualifications prescribed by the AICTE have legal force.

9. The present controversy does not deal with the same. In fact, a perusal of the judgement of the Delhi High Court clearly shows that so far as awarding of a particular scale or increments thereto are concerned, the

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matter has been left to the concerned State Governments. This is apparent from the letter of 30.12.1999 written by the AICTE to the Secretaries dealing with Technical Education of all State Governments and Union Territories which reads:-

"To

The Secretaries
Dealing with Technical Education
of All State Govts. and Union Territories

Sub: Recommendations of the All India Council for Technical Education (AICTE) regarding revision of Pay Scales and Service Conditions of Teachers of Technical Institutions (Diploma).

Sir,

You are aware that the All India Council for Technical Education (AICTE) has been established by an Act of Parliament for proper planning and coordinated development, regulation and maintenance of Norms and Standards in the Technical Education System throughout the country. Consequent upon revision of Pay Scales based on the recommendations of the Central Vth Pay Commission, AICTE formulated a revision of Pay Scales and Service Conditions for Diploma Level Technical Institutions in the country. The recommendations of AICTE were sent to Govt. of India for approval. The Govt. of India examined these recommendations and suggested that the revised Pay Scales and Service Conditions may be circulated to all the State Govt.'s and Union Territory Administrations for information and appropriate action. Accordingly the recommendations of the AICTE are hereby communicated to all concerned.

These recommendations are applicable to all Diploma Level Technical Institutions falling under the Purview of the All India

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Council for Technical Education.

Yours faithfully,
Sd/-
(R.S. Nirjar)
Member Secretary(AICTE)"

The notification also runs on the same lines and the relevant portions of paragraph 2.3 of the same reads:-

"2.3 State Government Institutions and Private Aided Institutions

Taking into account the local conditions, a State Government may implement the revised pay-scales from a date later than January 1, 1996 and/or implement pay-scales other than those given in this notification, but which are not higher than the pay-scales given in Tables (Appendix A-1, 2 and 3). In such cases, the details of the modification proposed either to the scales of pay or the date from which the Scheme is to be implemented, should be furnished to the All India Council for Technical Education for its approval.

From the aforesaid, it is clear that the pay scales have to be given by the concerned State Governments. The schemes to be implemented have to be furnished to the AICTE for its approval. To that extent, therefore, the decision of AICTE will have a binding force because our attention has not been drawn to any order issued by the Delhi Administration giving the benefit of the same to the employees recommended by the AICTE. Therefore, the said contention necessarily must fail.

10. Otherwise also, the learned counsel for the respondents has drawn our attention to an order passed by the Supreme Court in Special Leave to Appeal (Civil)

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No. 17529/2002 dated 28.2.2003. A perusal of it reveals that against the decision rendered by the Delhi High Court in the case of Sanjiv Lochan Gupta & Ors. (supra), the Government of N.C.T. of Delhi had preferred the Special Leave Petition and status quo had been granted. The learned counsel further informs us that on the next date of hearing, the stay had been made absolute. In any case, therefore, the applicant cannot claim benefit of the said decision of the Delhi High Courts.

11. In this regard, the respondents have repeatedly pointed that so far as the Delhi Administration is concerned, it is an autonomous body and teachers in the College of Arts are Government servants. They cannot have the same benefit as teachers of Delhi University. The plea necessarily must prevail because they are different bodies and thus unless contrary is shown or disparity is established (which is not alleged herein), the contention on that count must fail.

12. A feeble attempt even was made that the scheme announced by the University Grants Commission should be made applicable. In reply to paragraph 4.21 of the application, the respondents contended that the technical institutions such as College of Arts fall under the purview of AICTE and, therefore, the scheme announced by the University Grants Commission is not applicable. Unless the same is adopted indeed, the contention of the

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respondents in this regard cannot be held to be futile.

13. Consequently, once the recommendations of the AICTE having not been adopted as yet, the applicant cannot claim benefit of two advance increments or fixation of his pay as claimed. However, if such recommendations are accepted, necessary consequences can follow.

14. Another plea raised is that the applicant's claim should be forwarded to the Delhi University to designate him as a Reader. We were told and the fact could not be controverted before us that there is no post of Reader with the respondents. In the absence of any post, designating the applicant as a Reader would be an exercise in futility because a person ordinarily could not be so designated when there is no such post that is available.

15. Our attention has been drawn to the fact that in the case of certain other persons, advance increments had been granted. The reply of the respondents in paragraph 4.19 is as under:-

"4.19. That the contents of this para of the O.A. are wrong as alleged, hence denied as such. The case of Dr.Mrs. H.Popli is different. She was given increments on the basis of recommendations of Dogra Committee in September, 1991. Dr.Popli was Ph.D. before joining the College of Pharmacy and accordingly Dogra Committee recommendations were extended. The Ph.D. of Dr.Popli, was also in the relevant field for

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which she was appointed, whereas the applicant did his Ph.D. during the service and in the year 1999, he has submitted the record of the department. The department is yet to examine whether the Ph.D. is in the relevant filed and it is also to be seen whether the benefits of advance increments can be extended to him as Vth Pay Commission Recommendations are applicable w.e.f. 1996 and his case can be considered only when the recommendations of Govt. of India made in 1999 are accepted by Govt. of Delhi."

In other words, it has been asserted that a decision on basis of the Dogra Committee recommendations has yet to be taken as to if any advance increments have to be granted to the applicant i.e. whether the applicant has Ph.D. degree in the relevant filed or not. Once a decision on that count has since not been taken, necessarily, a direction has to be issued to take such a decision.

16. No other argument was raised.

17. Resultantly, the application fails and is dismissed. However, with respect to the advance increments, it is directed that as pointed in paragraph 4.19 of the counter, the respondents must take a conscious decision preferably within three months from the date of receipt of a certified copy of the present order as to if the applicant is entitled to the increments as had been given in the case of certain other employees. No costs.

/sns

(Govindan S. Tampi)
Member (A)

(V.S. Aggarwal)
Chairman.