

(9)

Central Administrative Tribunal
Principal Bench

O.A. No. 3032 of 2002

New Delhi, dated this the 17th September, 2003.

HON'BLE JUSTICE MR. V.S.AGGARWAL, CHAIRMAN
HON'BLE MR. R.K.UPADHYAYA,ADMINISTRATIVE MEMBER

Tilak Raj Sachdeva,
S/o Sh. Karam Chand Sachdeva,
R/o Plot No.176, Pratap Nagar,
Jail Road, Near Hari Nagar Depot.,
New Delhi- 110 064

....Applicant.
(By Advocate: Shri Baljit Singh)

Versus

1. Govt. of NCT of Delhi,
through
Chief Secretary,
Delhi Sachivalaya,
I.P. Estate, ITO,
New Delhi.
2. The Secretary (Education),
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.
3. The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.
4. The Joint Director of Education(Admn.),
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.

....Respondents.
(By Advocate:Shri Mohit Madan, proxy for Mrs.Avnish Ahlawat)

ORDER(ORAL)

Shri R.K.Upadhyaya,Administrative Member

This application under section 19 of the Administrative Tribunals Act,1985 has been filed by the applicant Tilak Raj Sachdeva seeking a direction to quash and set aside the impugned order dated 26.8.2002 (Annexure-AI) by which his claim for selection grade has been rejected.

Chingus

2. The applicant was appointed as Drawing Teacher in the MCD Higher Secondary School on 7.11.62. It is stated that since all the MCD schools were taken over by the Directorate, Delhi Administration, he was also transferred to Directorate of Education on 1.7.70. The applicant states that he was awarded selection grade (Rs.740-880/-) on 1.4.81. Learned counsel of the applicant stated that the Ministry of Human Resource Development (Department of Education) vide letter dated 12.8.87 (Annexure-A II) communicated the revised pay scales of school teachers. As per this letter, 20% of the posts in the senior scale of each category of respective cadre were placed in the selection grade and were to be filled up as per norms stated therein. Learned counsel of the applicant further stated that the letter dated 6.2.89 (Annexure-A III) clarified that those teachers who were already in the pre-revised selection grade will be placed in the senior scale. It is claimed that the applicant was given selection grade on 1.4.81 and as such he completed 12 years of service in the selection grade/senior scale on 31.3.93. Therefore, he became entitled for selection grade w.e.f. 1.4.93 being within 20% of the posts of senior scale teachers of his category. The applicant states that he was at the top of the list of the persons within 20% of the posts of senior scale teachers. Accordingly the Principal of the School in which the applicant was working recommended his case for grant.



of selection scale of Rs.2000-3500/- w.e.f. 1.4.93 vide letter dated 3.5.93 (Annexure-A IV). The Directorate of Education initially informed the applicant vide letter dated 18.10.93 (Annexure-A VI) that his name was not within the zone of consideration. Inspite of repeated representations, the request of the applicant was not acceded to. Therefore, the applicant filed OA No.1554/2002 seeking a direction for grant of selection scale along with consequential benefits w.e.f. 1.4.93 . Vide order dated 6.6.2002 (Annexure A-X), the aforesaid OA No.1554/2002 was disposed of by this Tribunal with the following direction:

"We have considered the submissions made by the learned counsel and the afores stated facts and circumstances and find that it will be just and proper to dispose of the present O.A. at this very stage even without issuing notices with a direction to the respondents to consider the aforesaid representation and to pass a reasoned and a speaking order thereon within a period of three months from the date of receipt of a copy of this order."

3. On receipt of the order of this Tribunal, the respondents called for certain informations regarding term of appointment, educational qualification of the applicant etc and passed the impugned order dated 26.8.2002 (Annexure-A I). The applicant's prayer for selection grade has been rejected by the impugned order observing as follows:

"The applicant was asked to produce initial appointment order, promotion order as a Sr. Drawing teacher and also asked as to whether there was any waiver of the qualification of the

Ch. 75 para 3



Recruitment Rules. In response to which he was given a reply dated 13th August, 2002, which has been considered in which he has stated that he was appointed as Sr. Drawing Teacher and claimed equivalence to the Post of PGT. In para 3 of his reply, he stated that he has passed an Art and Craft Teachers Course from Govt. School of Arts (Pb) Shimla which is recognised by the Central Board of Secondary Education for teaching drawing including geometrical and mechanical drawing upto Higher Secondary classes. Irrespective of the fact that this qualification may be recognised by the CBSE for teaching geometrical and mechanical drawing upto higher secondary classes i.e. XIth plus. The Recruitment Rules framed under Article 309, which is of statutory nature provides for 5 years full time diploma for the post of PGT in respect of the existing teachers. Therefore, with due regards to his submissions, I am not in agreement with his claim that since the Board has recognised his qualification to teach secondary classes, he is eligible for the selection scale which is qualification to the post of PGT.

In view of this claim of the applicant for grant of selection scale cannot be considered.

Ordered accordingly."

4. Learned counsel of the applicant stated that the Recruitment Rules for the post of Drawing Teacher notified by the Government on 5.9.81 provides essential and desirable qualifications as follows:

ESSENTIAL

M.A. in Drawing and Painting/Fine Art from a recognized University.

OR

B.A./B.A. with Drawing and Painting/Art/Fine Art within minimum 2 years full time Diploma from a recognized Institution.

OR

Higher Secondary/Intermediate with minimum 4 years full time Diploma in

Chintamani

Painting/Fine art from recognised institution/University.

(However for existing teachers, the essential qualifications shall be High School with 5 years' full time Diploma).

DESIRABLE

At least 2 years Drawing Teachers Training Course from a recognised Institute.

OR

Two years teaching experience in a recognised Institute."

5. According to the learned counsel, these recruitment rules are not applicable in the case of the applicant as he was already in the selection grade from the year 1981. In the new revised pay scales, the selection grade has been described as "Senior Scale". It was pointed by the learned counsel of the applicant that his qualification is Matric Art & Craft Shiksha Course. He had two years' diploma from Arts and Crafts Teachers Course, Govt. School of Arts, Shimla (Pb). He invited attention to photostat copy of letter dated 11.1.69 (Annexure-A XIII) to show that Art and Craft Teachers Certificate (two years course) of Govt. School of Art, Shimla/Chandigarh was recognised by the erstwhile Delhi Board for teaching drawing including Geometrical and Mechanical drawing upto Class XI. According to him, the new rules which require five years' full time diploma for the post of Drawing Teachers will be applicable in the case of new recruits after the new rules were notified in 1981. They cannot be made applicable in the case of

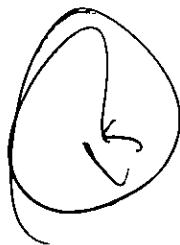
Ch. S. S. Singh



applicant. Therefore, the decision of the respondents as per the impugned order dated 26.8.2002 (Annexure-AI) deserves to be quashed.

6. Learned counsel also sought support from the case laws for his contention. He invited attention to the order of this Tribunal in the case of "Thakar Das Sapra & Ors. Vs. Lt. Governor(Administrator), Union Territory of Delhi and others (1987) 3 ATC 849. The case of Thakar Das and others was that when they were recruited, they were qualified to each Class XI. Merely because they did not possess the revised qualifications now prescribed, they could not be denied the higher pay scale. This Tribunal held that the pay scale of teachers in the common cadre of Senior Grade teachers cannot be different. Learned counsel of the applicant also placed reliance on the decision of Punjab and Haryana High Court in Brig. Satya Dev Vs. State of Haryana & Ors. 2002(2) All India Services Law Journal 12 wherein it has been held that the service condition cannot be changed to one's disadvantage after appointment. Learned counsel of the applicant also placed reliance on the decision of Delhi High Court in Miss A.R.Neelayadakshni and Ors. Vs. University of Delhi and Ors. 2002(2) All India Service Law Journal 245, wherein it has been held that the revision of qualification could be only prospective.

C. Bhagat



7. The respondents have opposed this OA on the ground that the case put by the learned counsel of the applicant is misconceived. The applicant falls in the category of special cadre of TGT (Drawing). The applicant was granted selection grade of Rs.740-880/- w.e.f. 1.4.81. The scales of school teachers were revised by the Ministry of Human Resource Development vide their letter dated 12.8.87 w.e.f. 1.1.86. After the revision of pay scales in one category, three scales were introduced, i.e., entry scale, senior scale after 12 years of service in the grade and selection scale after 12 years service in the senior scale of the respective cadre and on attainment of higher qualifications laid down for the next higher post. The respondents have pointed out that the essential qualifications as per the recruitment rules is High School with five years' full time Diploma. The applicant is Matric, Art and has two years diploma in Arts and Crafts Teachers Course, from Government School of Arts, Shimla. The applicant has come from the MCD school and as per the order revising the pay scales w.e.f. 1.1.86, the specific condition has been laid down that selection scale will be subject to attainment of the higher qualification laid down for the next higher post and as per the recruitment rules, the applicant is not fulfilling the essential qualifications, i.e., five years full time diploma which is essential qualification for PGT (Drawing).

Ch. Bhagwan

6

8

8. We have heard the learned counsel of both the parties and have perused the materials available on record.

9. The applicant had joined service as Drawing Teacher in the MCD School on 7.11.62. Thereafter, he was transferred to the school under the Directorate of Education when all the MCD schools were taken over by the Directorate of Education. The applicant was also awarded selection grade Rs.740-880/- on 1.4.81. There is no dispute that the applicant holds educational qualification of Matriculation with two years diploma from Arts & Crafts Teachers Course, Govt. School of Arts, Shimla (Pb). The recruitment rules have been notified as per Govt. notification dated 5.9.81. This clearly states that "for existing teachers, the essential qualifications shall be High School with 5 years' full time diploma."

10. On the facts of this case, the decisions relied by the learned counsel of the applicant do not appear to be applicable. In the case of Thakar Das & Ors. (supra), the discrimination in the pay scales of the same cadre of teachers was challenged. That discrimination was not held to be valid. The case before the Punjab and Haryana High Court of Brig. Satya Dev (supra) related to change of service conditions during the employment. In the case before the Delhi High Court of Miss A.R. Neelayadakshni & Ors. (supra), the petitioners were doing same work but

Chhaya

the change of educational qualification could not be effected retrospectively. In the present case, the applicant was appointed in the year 1962. He was awarded scale as per the rules applicable at that time. The selection grade was given to him w.e.f. 1.4.81. As per the revised pay scales of the teachers, the pre-revised selection grade has been described as "senior scale". The applicant has not been deprived of that scale of pay. As per the new recruitment rules which were notified on 5.9.81, the senior scale will be granted to those Drawing teachers who had five years full time Diploma. Since the applicant did not possess the basic qualification, he cannot make any grievance for not being given that scale. Merely because he was in the service prior to new rules of 1981, he cannot be held to be eligible for the same.

11. This application being devoid of any merits is, therefore, dismissed without any order as to costs.


(R.K.Upadhyaya)
Administrative Member


(V.S.Agarwal)
Chairman