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Central Administrative Tribunal
Principal Bench

O.A.No.1308/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 12th day of May, 2003

Sh. Atma Ram Dahiya (A. R.Dahiya)
Ex-maintenance Engineer
GB Pant Polytechnic
Okhala, New Delhi
r/o L-I/408, DDA Flats
LIG Kalkaji
New Delhi. .. Applicant

(By Advocate: Sh. Surat Singh)

Vs.

1. Lt. Governor
Govt. of NCT of Delhi
Raj Niwas, Delhi.
2. Principal Secretary
DTTE (Director of
Training & Technical Education)
Govt. of NCT of Delhi
Muni Malya Ram
Pitampura
New Delhi.
3. Principal
G.B.Pant Polytechnic
Okhala
New Delhi.
4. Pay & Accounts Officer
Govt. of NCT of Delhi
Pay and Accounts Office-XIII
DTS Building Shakar Road
New Delhi. .. Respondents

(By Advocate: Sh. George Paracken)

O R D E R

By Shri Shanker Raju, M(J):

Applicant, who retired on superannuation on
31.10.2000, has sought the following reliefs:

1. The Hon'ble Tribunal may kindly
be pleased to direct the
Respondents to make the payment
of the Retirement dues mention in
Annexures-A/1 to A/4, without any
further delay with interest the
w.e.f. 31.10.2000.

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2. Any other relief which this Hon'ble Tribunal deem may fit and proper be also granted in favour of the Applicant and against the Respondents."

2. Applicant was initially appointed as Workshop Instructor on 9.2.1965 and was promoted as Maintenance Engineer on 16.2.1995.

3. Government of India on 13.9.1991 introduced the Scheme of in situ promotion which was endorsed by Government of NCT on 12.11.1991. In further OM dated 25.5.1992, circulated by Govt. of NCT on 16.7.1992, it has been clarified that Group 'C' employees stagnating at the maximum pay scale for more than a year cannot be allowed in situ promotion to the next higher scale which happens to be a Group 'B' Scale. Applicant who was stagnating in the selection grade of Workshop Instructor at Rs.2900/- for more than a year which is the Group 'C' scale was wrongly granted in situ promotion in the pay scale of Rs.2000-3200 by an order dated 4.1.2000. As Pay & Accounts Officer has raised objection in granting in situ promotion, accordingly, the Bill for payment of Rs.25,923/- on account of in situ promotion had not been passed. Applicant was drawing maximum pay scale of Rs.1640-2900 on 1.1.1989. With the grant of in situ promotion in the grade of Rs.2000-3200, which is the next higher scale and next promotional post is of Maintenance Engineer in the scale of Rs.2000-3200, and that qualifications of 7 years experience as WSI with Diploma which is in the scale of Rs.8000-13500(revised). The pay of applicant was fixed as on 1.4.1992 at Rs.3125/-.

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4. Case of applicant was re-examined in consultation with the Finance (Accounts) Department of GNCTD as per the OM dated 25.5.1992 employees belonging to erstwhile selection grade are entitled for in situ promotion provided they are appointed to ordinary grades as direct recruits and their pay fixed at the minimum of that scale. As in situ is not applicable to the Group 'C' stagnated, letter dated 25.9.2002 issued to applicant informing regarding non-entitlement of in situ promotion.

5. Accordingly, bill for payment of Rs.25,923/- as well as leave encashment bill for Rs.1,50,397/- which was based on the in situ pay was also, not passed by the PAO.

6. Shri Surat Singh, learned counsel for applicant, drawing my attention to an order passed on 14.9.2001 contended that similarly circumstance selection grade are still being paid the benefits of in situ promotion and no action has been taken to withdraw their benefits. In this view of the matter, hostile discrimination is alleged violative of Articles 14 and 16 of the Constitution of India.

7. On the other hand, respondents denied the assertions and learned counsel for respondents contended that as the applicant, as per Rules, was not entitled for benefits of in situ promotion after due notice, the same was withdrawn, accordingly, leave salary and other payments which are worked out on the basis of in situ promotion are not being paid. It is

further contended that a wrong order cannot vest the applicant a right and in that event, no discrimination can be alleged.

8. I have carefully considered the rival contentions of the parties and perused the material on record.

9. The Apex Court in Chandigarh Administration v. Jagjit Singh, JT 1995(1) SC 445 held as follows:

"Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order."

10. Apex Court in State of Bihar and Others v. Kameshwar Prasad Singh & Another held as follows:

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh v. New Delhi Municipal Committee held that citizens have assumed wrong notions

regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:(SCC p.465, para9)

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secy. Jaipur Development Authority v. Daulat Mal Jain this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp. 51-52, para 28)

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.""

11. If one has regard to the aforesaid ratio, as applicant, who was a Group 'C' employee and was holding selection grade, as per the clarification issued on 25.5.1992, was not entitled for in situ promotion, despite stagnated at the maximum of the scale of pay for more than a year, could not have been eligible for grant of in situ promotion, the same has been wrongly bestowed upon him. Nothing preclude the Government from rectifying such mistake, if the action

is based on a wrong interpretation of the rule or is against the law. However, by an order dated 18.10.2002, the aforesaid benefits have been withdrawn, with due intimation to applicant.

12. The contention put forth by the applicant's counsel that similarly circumstance and identically situated persons are still getting in situ promotion, cannot be countenanced as a wrong order cannot be allowed to perpetuate and cannot be the basis of seeking parity under Article 14 of the Constitution of India. Moreover, a wrong order cannot ensure the consequences inadmissible in law.

13. Having regard to the aforesaid, I do not find any infirmity in the order passed by respondents, OA is accordingly bereft of merit and is dismissed but without any order as to costs.

S. Raju
(Shanker Raju)
Member(J)

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