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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1204/2001

New Delhi, this 5th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

Smt. Sushila Singh
TGT(Hindi), Sarvodaya Kendriya
Vidyalaya No.1, Mansarovar Park
Delhi-93

.. Applicant

(Shri B.S. Mainee, Advocate)

versus

1. Chief Secretary
Govt. of NCT of Delhi
5, Sham Nath Marg, Delhi
2. Director of Education
Delhi Admn., Old Secretariat
Delhi

.. Respondents

(Shri George Paracken, Advocate)

ORDER(oral)

By Shri M.P. Singh, Member(A)

In this OA, the applicant is seeking directions to the respondents to fix her pay in pay scale of Rs.7500-12000 with consequential benefits and interest thereon @ 18% per annum. The admitted facts of the case are that the applicant was working as TGT(Hindi) in the Government of Rajasthan. On her request, she was taken on deputation in the Directorate of Education, Delhi as TGT(Hindi) in the pay scale of Rs.1400-2600 w.e.f. 30.9.94. She was granted non-functional selection grade in the pay scale of Rs.2000-3200 in her parent department in Govt. of Rajasthan w.e.f. 24.12.95. Therefore her pay was accordingly fixed at Rs.2000 w.e.f. 24.12.95. The pay scale of Rs.2000-3200 was revised to Rs.7500-12000 w.e.f. 1.1.96. Though this scale was approved but the same was not implemented and the applicant continued in the old pay scale of Rs.2000-3200. She was later on repatriated to her parent department in Govt. of Rajasthan from 15.5.2001.

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2. Heard the contentions of rival contesting parties and perused the records.

3. During the course of the arguments, the learned counsel for the applicant has submitted that although the applicant was entitled to the revised pay scale of Rs.7500-12000, which was duly approved but the respondents have fixed her pay in the pay scale of Rs.6500-10500. According to him, the old pay scale of Rs.2000-3200 was revised to Rs.7500-12500 and, therefore, her pay ought to have been fixed in that revised scale. He has also submitted that the applicant had submitted her representation but it was not replied to by the respondents. He has further submitted that an amount of about Rs.2.5 lakhs is due to the applicant but it has not yet been released by the respondents.

4. On the other hand, learned counsel for the respondents has submitted that the Principal/DDO made entries in her service book and her pay has been fixed in the pay scale of Rs.7500-12000 as per the recommendations of the Vth Pay Commission. However, the DDO realized that the said pay fixation was not according to the rules and regulations and therefore neither any pay nor any arrears was drawn in the pay scale of Rs.7500-12000 and her pay was fixed in the pay scale of Rs.6500-10500 which is the replacement scale of old pay scale of Rs.1640-2900. The applicant was appointed on deputation in the pay scale of Rs.1400-2600 from the Government of Rajasthan. She was granted the selection grade of Rs.2000-3200 by the Rajasthan Government, as applicable to their employees. There is no scale of Rs.2000-3200 as

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selection grade to teachers in Delhi. TGT scale in Delhi school was Rs.1400-2600 and selection scale was Rs.1640-2900 and hence replacement scale of Rs.1640-2900 i.e. Rs.6500-10500 was granted to her. According to him, applicant cannot be given higher and different selection grade than her counterparts in Delhi schools just because she was given higher selection scale of Rs.2000-3200 by the Rajasthan Government. Since she was working in Delhi school at the relevant time, she has to be treated at par with other similarly placed TGTs.

5. After going through the records, we find that the applicant was working as TGT in the pay scale of Rs.1400-2600 in the Govt. of Rajasthan and was appointed on deputation with effect from 30.9.94. Since she was granted selection grade of Rs.2000-3200 in her parent department, the same pay scale of selection grade was extended to her while she was working in Delhi.

6. As per para 4.1 of Chapter 49 of the Manual on Establishment & Administration, the applicant on her appointment on deputation could have opted to draw either the pay in the scale of pay of deputation post or her basic pay in the parent cadre plus deputation (duty) allowance therein plus personal pay, if any. The option once exercised shall be final. However, the employees may revise the option under the following circumstances which will be effective from the date of occurrence of the same:-

- (a) when he receives pro-forma promotion or is appointed to non-functional selection grade in his parent cadre;
- (b) When he is reverted to a lower grade in his parent cadre;

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- (c) When the scale of pay of the parent post on the basis of which his emoluments are regulated during deputation/foreign service or of the ex-cadre post held by the employee on deputation/foreign service is revised either prospectively or from a retrospective date;
- (d) Based on the revised/same option of the employees, in the event of pro forma promotion/appointment to non-functional Selection Grade, revision of scales of pay in the parent cadre, the pay of deputationists will be refixed with reference to the revised entitlement of pay in the parent cadre. However, if the initial option was for the pay scale of the deputation post and no change in opinion already exercised is envisaged, the pay already drawn in deputation post will be protected if the pay refixed is less.

7. In this case, vide order dated 22.8.94 (Annexure R-1) the Directorate of Education (Respondent No.2) had decided that during the period of deputation the applicant would not be entitled for any deputation allowance. This order further states that she will have to submit her option within a period of one month from the date of joining in that department as to whether she wants to draw her pay in the scale of Rs.1400-2600 of deputation post or her basic pay in the parent department. As soon as the period of deputation of one year of the applicant expires in the Directorate, she will have no claim of her adjustment in that Directorate or for any equivalent post. It is not clear as to whether the applicant on her appointment on deputation had opted to draw either the pay in the scale of pay of deputation post or her basic pay in the parent cadre plus deputation (duly) allowance plus personal pay, if any. Both the learned counsel for the parties have failed to show us any document in which she had exercised her option for fixation of pay as required under Rules (supra) and also any order passed by respondents for re-fixation of her pay in the post of TGT in Delhi

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Government. In the absence of such information, it is not clear as to whether she had opted for the pay of the deputation post or the basic pay of her parent cadre post plus deputation (duty) allowance.

8. In any case, the applicant had been appointed on deputation to the post of TGT in the pay scale of Rs.1400-2600. That apart, during her period of deputation she could not have been appointed/promoted to any higher post in the borrowing department as she was not eligible for promotion during her tenure of deputation. In case she had given revised option at the time of her promotion in selection grade in her parent department, which as per the pleadings made in the OA was granted to her in the pay scale of Rs.2000-3200, she would continue to get the pay in the pay scale of Rs.2000-3200 during the period of deputation, unless the same has been revised or upgraded, subject to the condition that the same shall not exceed the maximum of the scale of the post she was holding on deputation, i.e. TGT.

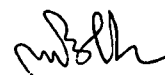
9. The plea taken by the respondents that the selection grade of TGT in Delhi Schools was Rs.1640-2900 and the applicant was granted replacement scale of selection Grade i.e. Rs.6500-10500 also does not appear to be correct. She was appointed in the grade of TGT in Delhi on deputation in the pay scale of Rs.1400-2600 and therefore as per Rules her pay cannot be fixed beyond the maximum of the scale of TGT. As per Rules, she would be entitled only to the revised pay scale of TGT w.e.f. 1.1.1996 in Delhi schools and her pay cannot be fixed in the revised scale of selection grade of TGT in Delhi

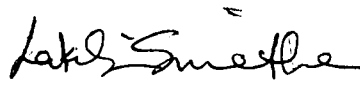
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School. Promotion of TGTs to selection grade or even higher grade in Delhi Schools is regulated in accordance with the Recruitment Rules prescribed for that post and the applicant being on deputation could not have been considered for selection grade or further promotion, contrary to the Rules, unless and until she is absorbed in Delhi school on receipt of her option and on obtaining approval of the lending department for the same. Even such a promotion can be granted according to her position in the seniority list of TGTs in Delhi Government, and fulfilling other conditions like suitability and coming in the zone of consideration etc. as prescribed in the Recruitment Rules for the post and other instructions issued by the government on the subject from time to time.

10. In view of what has been discussed above, we find no merit in the present OA and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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