

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2620 of 2001

New Delhi, this the 16th day of April, 2002

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Rishi Parkash Dahiya
S/o SHri Hukum Singh
R/o Village & P.O. Halapur,
District Sonapat (Haryana).
2. Mahipal Singh S/o Shri Amar Singh
R/o Village Jhinjholi
P.O. Halapur,
District Sonapat.
3. R.N. Sharma
S/o Shri Tek Ram
R/o Village & P.O. Paprawat,
New Delhi-110 043.
4. Jyot Ram Verma
R/o Village & P.O. Bhathal,
New Delhi-110 061.
5. R.C. Sharma
R/o Village & P.O. Jharoda Kalan,
New Delhi-110 043. **-APPLICANTS**

(By Advocate: Shri Yogesh Sharma)

Versus

1. NCT of Delhi through the Chief Secretary,
New Sectt. New Delhi.
2. The Director,
Directorate of Education,
Government of Delhi Old Sectt., Delhi.
3. The Joint Director (Admn.)
Directorate of Education,
Old Sectt. Delhi-110 054. **-RESPONDENTS**

(By Advocate: Shri Mohit Madan, proxy counsel for
Avnish Ahlawat)

O R D E R (ONE)

By Hon'ble Mr.Kuldip Singh, Member(Judl)

This is a joint application filed by 5 applicants whereby they claim for grant of pay scale of Rs.160-300 with effect from February, 1963 along with corresponding selection grade in the same manner which had been granted to their juniors.

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2. The applicants had also made a representation to this effect which has been rejected. The applicants had also filed an OA 1445/2000 which was decided by this court vide order dated 11.8.2000 with a direction to the respondents to dispose of the representation dated 26.7.2001. The respondents rejected the representation on the plea that these applicants who were working as drawing teachers had not taught higher classes upto 10th standard so they are not entitled to have comparison with their juniors S/Shri Chatter Singh and Keshav Ram and those teachers had been granted higher scale by the Tribunal and the High Court as they were teaching higher classes upto 10th standard.

3. The applicants while challenging these orders and have submitted that they are similarly situated and are in the same cadre and were senior to Shri Chatter Singh and Shri Keshav Ram and, therefore, they are entitled to the same relief which was granted to Shri Chatter Singh in OA 464 of 1989 and applicants also rely upon the judgment in Girdhiari Lal Vs. U.O.I. and Others for getting the same relief as they are similarly placed.

4. The applicants also claim that their services had been used to teach higher classes upto 10th standard so their pay was rightly fixed in the pay scale of Rs.160-300 vide letter dated 5.4.1961 but it had been illegally withdrawn thereafter which is against the rules as such they pray that since they are senior to Chatter

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Singh and Keshav Ram as such they are entitled for fixation of pay in the pay scale of 160-300 w.e.f. February, 1963.

5. The respondents are contesting the OA. The respondents in their reply pleaded that the applicants are not entitled to the benefits of the judgment dated 28.2.1994 and their claim is misconceived.

6. The respondents also pleaded that the application is barred by the principles of constructive res judicata as no relief is claimed by the applicants in OA 1445/2000 and OA 2737/99 which was decided on 8.3.2001. The respondents also pleaded that the claim of the applicants is barred under Section 21(3) of the Administrative Tribunal's Act, 1985 as it deals with a grievance arising more than 3 years prior to the constitution of the Tribunal.

7. On merits the respondents also denied that the applicants were appointed to teach class Xth.

8. It is further submitted that this revised pay scale of Rs.160-300 is admissible to only those drawing teachers who had worked in the scale of Rs.100-250 and as per Government of India letter dated 6.12.1993, the qualifications for the drawing teacher in the scale of Rs.160-300 is Matric with diploma/certificate in drawing from a recognized institution involving not less than 2 years course of instruction which is also recognised by

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the Central Board of Secondary Education, Delhi and three years teaching experience of the subject from a recognised school.

9. It is further submitted that applicants at no point of time were teaching classes IXth and Xth.

10. It is further submitted that Shri Chatter Singh was granted seniority at S.No.86-A and was given the pay scale by the Hon'ble Tribunal as he was found to be teaching higher classes upto Xth standard. Thus it is submitted that the case of the applicants are distinguishable from the case of Chatter Singh and merely if a person has been fixed in a higher scale on that account the applicants cannot be allowed higher scale because in that event the higher scale would have to be granted to all those teachers who were in the scale of Rs.80-220 and who do not possess the prescribed qualification for drawing teachers, thus it is prayed that the OA be dismissed.

11. We have heard the learned counsel for the parties and gone through the records of the case.

12. The learned counsel appearing for the applicant submitted that the applicants had initially joined as Drawing Teachers in the pay scale of Rs.80-220 and were posted to teach higher classes and their junior Shri Chatter Singh who was appointed on 12.8.60 was at S.No. 189 of the seniority list and had filed an OA No.464/89 seeking relief of revision of the pay scale to Rs.160-300 w.e.f. 1.7.59. The said OA was allowed vide order dated

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28.2.94 so it is submitted that the case of the applicants is also a similar one and they are also entitled to the same relief.

13. However, the learned counsel appearing for the respondents submitted that the case of the applicants is hopelessly barred by time and even their representation was also barred by time but the applicants had filed an OA 1445/2000 seeking the same relief but in order to come over the difficulty of limitation in the said OA, the applicants sought a direction to the respondents to dispose of the representation and the OA was disposed of with a direction to the respondents to dispose of the representation dated 30.3.2000. This was a clever move on the part of the applicants to bring the OA within limitation as in accordance with the directions of the Tribunal the department was obliged to dispose of the representation and the applicants are taking fresh cause of action from Annexure A-1 vide which the representation of the applicants were disposed of, otherwise the case of the applicants is that they had already retired from service and now in September, 2001 they have filed an OA seeking a relief for grant of pay scale of Rs.160-300 w.e.f February, 1963 with all the consequential benefits. Even the OA of Chatter Singh was also decided vide judgment dated 28.2.1994 and the present OA has been filed on 28.9.2001. Thus it is clearly barred by time and hit by the principles of delay and laches.

14. Learned counsel for the respondents further submitted that the pay scale of Rs.160-300 was admissible to those drawing teachers who were working in the

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prescribed scale of Rs.100-250 and possess the qualifications prescribed for the higher scale. For drawing teachers who were in the scale of Rs.80-220 they were only to be allowed revised scale of 120-300 but they were eligible to the scale of Rs.160-300 only if they possess the qualifications prescribed in the scale and none of the applicants has three years full time Diploma Course which was required as per Recruitment Rules, so none of the applicants was eligible for the pay scale of Rs.160-300.

15. It is also submitted that the applicants cannot claim parity with Chattar Singh who had been erroneously granted pay scale and as such they cannot claim parity with Chattar Singh.

16. As far the plea of limitation is concerned, the learned counsel appearing for the applicants referred to a judgment reported in 2000 (1) ALSJ page 54 entitled as K.C. Sharma and Others Vs. U.O.I. & Others wherein also the Hon'ble Supreme court had held that application filed by similarly placed persons should not be rejected due to delay and bar of limitation. On the same lines he has also relied upon another judgment reported in 2000 (1) ALSJ (CAT) page 33 entitled as Smt. Dipti Roy and Others VS. U.O.I. & Others wherein it has been held as follows:-

Similarly placed persons - Limitation - Demand extension and benefits of Supreme Court decision in the similar case of Hari Sham Rao - That case allowed benefit to only 48 persons involved therein - However Later S.C. gave some benefit in other case too - Held the benefit cannot be denied - As to limitation, held benefit to be given only from the date of filing application".

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17. On the same lines the counsel for the applicants referred to the decision in the case of Shiv Charan and Others Vs. U.O.I. & Others which is an appeal arising out of SLP (C) No.11126 of 1995 and also submitted that similar benefit was to be granted to the applicants as have been allowed to Santokh Singh.

18. As against this, the respondents had relied upon a decision in the case of OA 2737/99 filed by one Rattan Singh who had also claimed similar relief and the OA of Rattan Singh was dismissed.

19. It is further submitted that in the present case also the claim is barred under the provisions of Section 21(3) of the AT Act, 1985 as it deals with a grievance arising more than 3 years before the constitution of this Tribunal.

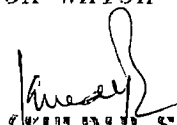
20. The respondents further submitted that in the case of Rattan Singh (Supra) while holding that the case is barred by time, the Tribunal had still held that since similar relief had already been granted so that would not be a bar for the department to extend the benefits as claimed by Rattan Singh therein. It is further submitted by the respondents that the order passed by the Tribunal is contrary to the judgment passed by the Hon'ble Supreme Court of India where the Hon'ble Supreme Court had directed that no direction be passed where the petition was dismissed.

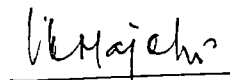
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21. We have considered this plea of limitation and we also find that the main relief of the applicants in the OA is for grant of pay scale of Rs.160-300 w.e.f. February, 1963 on the basis of a judgment delivered on 28.2.1994 in case of Chatter Singh, but still the main relief which the applicants are seeking is for grant of scale with effect from February, 1963 which is definitely much prior to 3 years before the constitution of the Tribunal. Hence we are of the considered opinion that the relief, as claimed by the applicants is hopelessly barred by time as provided under Section 21 (3) of the AT Act and is also hit by delay and laches.

22. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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