

Central Administrative Tribunal
Principal Bench

8

O.A. No. 1294 of 1999

Decided on 10.3.2000

Shri M.G. Burney & Others

... Applicant

(By Advocate: Shri M.N. Krishnan Mahi,
Sr. Counsel with Ms. Indu Malhotra, Adv.
Versus

NCT of Delhi & Others

... Respondents

(By Advocate: Shri Vijay Pandita)

CORAM

Hon'ble Mr. S.R. Adige, Vice Charman (A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? NO

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

Central Administrative Tribunal
Principal Bench

O.A. No. 1294 of 1999

9

New Delhi, dated this the 10th March, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

S/Shri

1. M.U. Burney,
B-2/147, Paschim Vihar,
New Delhi-110063.
2. B.B. Gupta
3. J.P. Agarwal
4. P.N. Gupta
5. O.P. Sharma
6. Mrs. Swaran Lata
Nominee of Shri Jagdish Raj
7. Kartar Singh
8. K.C. Tripathi
9. M.S. Dabas
10. G.P. Sharma
11. J.K. Tyagi
12. K.K. Jain
13. R.K. Gupta
14. R.K. Sharma
15. B.N. Kapoor
16. L.N. Aggarwal
17. Mrs. Savitri Devi (Wife)
Nominee of Shri Laxmi Kant
18. T.R. Bhardwaj
19. S.N. Bhardwaj
20. R.S. Tomar
21. Habib Ahmed,
22. Mrs. Padmawati Verma
23. T.S. Yadav
24. M.M. Singh

2

(10)

25. Veer Bhadra
26. R.K. Yadav
27. Mallu Singh
28. Dev Dutt
29. Bhanwar Singh
30. D.C. Sharma
31. J.D. Shastri
32. J.S. Khanna
33. Kanwal Singh
34. R.D. Agarwal
35. Mrs. Saroj Devi Garg (Wife),
Nominee of Shri R.K. Garg
36. N.G. Shukla
37. Uma Dubey
38. Lalit Bahal
39. K.S. Saroha
40. A.S. Chouhan
41. D.P. Garg
42. R.K. Jain
43. Mrs. Kamla Devi (Wife)
Nominee of Shri H.S. Dabas
44. R.P. Mittal
45. Hardevi Kataria (Wife),
Nominee of T.C. Kataria
46. S.K. Dhawan
47. B. Srivastava
48. Mahinder Kaur (Wife)
Nominee of Shri Jagjeet Singh
49. Mrs. Padam Kumari
50. Shukla Nijhawan,
51. M.R. Shastri
52. P.B. Kohli
53. Raj Rani (Wife),
Nominee of Shri Lakhon Pal

~

54. L.N. Sharma
55. O.P. Arora
56. M.L. Rastogi
57. K.K. Bhardwaj
58. Sumer Chand
59. Sunil Kumar (Son),
of Shri Bhushan Pratap
60. M.P. Gupta
61. Smt. Indira (Wife) of
Shri K.N. Kapoor .. Applicants

(By Advocate: Shri M.N. Krishna Mani,
Sr. Counsel with Ms. Indira Malhotra,
Advocate)

Versus

1. Government of NCT of Delhi,
through its Chief Secretary,
Old Secretariat, Delhi.
Delhi.
2. The Director of Education,
Delhi Administration,
Old Secretariat, Delhi.
3. Union of India through
the Secretary to the Govt. of India,
Ministry of Education & Social Welfare,
Shastri Bhawan,
New Delhi. .. Respondents

(By Advocate: Shri Vijay Pandita)

ORDER

MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants impugn respondents' order dated 6.7.95 and dated 23.12.97 (Annexure PIV) granting merely 'notional' promotion to them, and denying them retrospective benefit of pay and allowances on the promoted post.

~

12

2. By the Hon'ble Supreme Court's judgment dated 16.8.94 in C.A. No. 2824/84 K.C. Gupta Vs. L.G., Delhi & Others and connected case (No. 2825/84) which traces the background of the case (1994 Supp. 3 SCC 408) the following conclusions were arrived at.

25. Having regard to all the facts and circumstances of the case in the two appeals our conclusions are as follows:

- (1) That the proportion between the TGTs of the Administration Cadre and the Special Cadre (Higher) will be worked out on their respective strength as it existed on the last day of the last academic session i.e. on 30.4.70 and thereafter the said proportion will be worked out on yearly basis. So long as TGTs Administration Cadre and TGTs Special Cadre (Higher), as on 30.4.70, are available no TGT (Middle) can be considered for promotion to the higher post of PGT. When TGTs in the said cadre, as on 30.4.70 are no longer available the promotion quota for TGTs Administration Cadre and TGTs Special Cadre will have to be fixed yearly on the basis of the respective strengths of the two cadres by taking into account TGTs (Middle) whose pay scales were revised with effect from 27.5.70.
- (2) In the combined panel of PGTs and the Headmasters, the PGTs en bloc shall rank senior to the Headmasters and till the members of the original cadre of PGTs (in the Corporation Service) is exhausted no Headmaster can be considered for promotion to the post of Vice-Principal/Principal.
- (3) The ratio of promotion of the Special Cadre (PGTs and Headmasters together) and the PGTs in Administration Cadre would be 1:4. As a consequence of this the promotions/appointments made to the post of Vice-Principals and Principals by order dated 7.9.76 contrary to the said ratio is quashed. The Delhi administration shall work out the promotions afresh to be made to the post of Vice-Principal/Principal from amongst the PGTs in the manner and in accordance with the ratio stated above. But it is made clear that those incumbents who were promoted by virtue of the judgment

N

(13)

of the Division Bench and are affected by this order/judgment delivered by us, they will have to be reverted but no recoveries for the difference of salary, etc. shall be made from them.

- (4) Those incumbents who have since retired or have died after retirement and are found entitled to any benefit by our decision, the same shall be considered by Respondents 1 to 4 and the benefits, if any, be worked out and paid to their nominees or legal representatives as the case may be.

25. The order passed by the Division Bench is modified accordingly. In the facts and circumstances of the case we make no order as to costs."

3. Thereupon respondents issued impugned orders dated 6.7.95 giving applicants promotion purely on ad hoc basis. Later, after issue of representation and a contempt application, corrigendum dated 25.9.95 was issued deleting the words 'purely on ad hoc basis' and still later by impugned order dated 23.12.97 only notional promotions have been granted to applicants, without benefit of pay and allowances from their due dates of promotion.

4. Applicants state that aggrieved by non release of pay & allowances from their due dates of promotion they made several representations to respondents, and receiving no satisfactory response, they filed I.A. No. 9 before Hon'ble Supreme Court in C.A. No. 2825/84 for directions but upon the Hon'ble Supreme Court observing that petitioners must take such action as was open to them in accordance with law, they sought permission and were allowed to withdraw the O.A. on 15.2.99 (Annexure PV).



14

5. Applicants state that thereupon they made further representations to respondents for arrears of pay and allowances and meeting with no satisfactory response, they have been compelled to file this O.A.

6. Respondents in their reply challenge the O.A. They state that there are no clear directions of the Hon'ble Supreme Court in its aforesaid judgment for the release of pay & allowances for the period for which applicants did not actually work on the posts to which they were promoted retrospectively. Consequently, relying upon certain rulings of the Hon'ble Supreme Court which respondents, contend was delivered in similar circumstances, viz P. Ramakrishnaiah Vs. Union of India & Anr. 1989 (2) SCR 92 and V. Kumar Vs. A.C. Chadha 1990 (3) SCC 482, they state that there has to be "no pay for the no work".

7. We have heard Shri Krishna Mani, learned Senior Counsel for applicants and Shri Vijay Pandita for respondents.

8. A perusal of Paragraph 25(4) of the Hon'ble Supreme Court's judgment extracted above makes it clear that those incumbents who had since retired or died after retirement and were found to be entitled to any benefit as per that decision, were to have had their benefits worked out and paid to their heirs or legal nominees. There is merit in applicants' contention that when benefits have been directed to be worked out and paid to heirs or legal nominees of retired/deceased incumbents, it cannot be denied to those who are still serving. It has also



(15)

been emphasised by applicants that this is a case where applicants were both ready and willing to work on the promoted posts, but were not promoted for no fault of their own, and under the circumstances the provisions of FR 17(1) or the principle of "no work no pay" would not apply. Reliance is placed on the Hon'ble Supreme Court's rulings on J.N. Srivastava Vs. Union of India & Others (1998) 9 SCC 559 and V.R. Roman Vs. Union of India 1993 Supp. (2) SCC 324.

9. We see merit in these contentions of learned counsel for applicant and under the circumstances hold that respondents' impugned order dated 23.12.97 granting applicants only notional promotion, and denying them arrears of pay and allowances on the promotional posts, cannot legally be sustained.

10. This O.A., therefore, succeeds and is allowed. The impugned order dated 23.12.97 to the extent that it grants applicants only notional promotion and denies them arrears of pay and allowances on the promoted ^{notional} posts, is quashed and set aside. Respondents are directed to calculate and pay applicants arrears of pay and allowances on the promoted posts w.e.f. their due dates of promotion

~

(16)

as expeditiously as possible and preferably within three months from the date of receipt of a copy of this order. Consequent to these directions if the death-cum-retirement benefits of any of the applicants who in the meanwhile have retired/expired requires recalculation, the same should be recalculated and paid to them along with arrears within the aforesaid period of time. No costs.

Kuldip Singh
(Kuldip Singh)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

gk