

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.208/98

New Delhi, this the 18th day of August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Alem Chand Sharma, S/O Shri Ghasi Ram
Sharma, R/O F-1942, Netaji Nagar, New
Delhi - 23.

Working at T.G.T. Drawing, Govt. Boys
Senior Secondary School, Molar Band, New
Delhi - 44.

(By Advocate: None)

.....Applicant

Versus

1. The Administrator, Govt. National
Capital Territory of Delhi, Raj
Niwas, Delhi.
2. Director of Education, Govt. of
N.C.T. of Delhi, Old Secretariat,
Delhi.

(By Advocate: Sh. Vijay Pandita)

....Respondents

O R D E R (Oral)

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

The applicant has filed this application
stating that in spite of several written and oral
requests made to the respondents, they have failed to fix
his pay correctly in the pay scale of T.G.T. Drawing
Teacher.

2. The brief relevant facts of the case are that
the applicant states that he was appointed as T.G.T.
(Drawing Teacher) by the respondents on 1.4.91 and has been
working with them since that date. He has also stated
that his name had ^{been} ~~been~~ figured in the panel of selected
candidates vide Office Order issued by Respondent-2,
i.e., Director of Education, Govt. of N.C.T. of Delhi,

18.

(14)

Delhi bearing No.69, dated 31.12.83. The applicant has relied on the judgement of the Hon'ble Supreme Court in Ishwar Singh Khatri & Ors. Vs. Union of India & Anr. (Civil Appeal No.1900/1987), which was decided on 4.8.89 (Annexure-A) which confirmed the order of this Tribunal in OA-1170/85. The applicant has further stated that after the aforesaid judgement of the Tribunal and the decision of the Hon'ble Supreme Court dated 4.8.89, Respondent-2 issued an order of appointment dated 12.9.89 and after completing the necessary formalities, he was appointed on 1.4.91 as T.G.T. (Drawing Teacher). The main grievance of the applicant as seen from the pleadings, is that the respondents have failed to implement the order of the Hon'ble Supreme Court dated 4.8.89 as they have not fixed his pay in the relevant pay scale on the basis of his seniority, rank and post as given in the judgement.

3. Today none has appeared for the applicant even on the second call. None had also appeared when the case was listed on the previous date of hearing. Accordingly, we have seen the pleadings and have heard Sh. Vijay Pandita, learned counsel for the respondents.

4. The respondents have given the brief facts leading to the filing of an earlier OA by certain affected parties in the Tribunal which was later decided by the Hon'ble Supreme Court in Ishwar Singh Khatri's case (Supra) by order dated 4.8.89. It is seen from the reply filed by the respondents that they have stated that the applicant was appointed as T.G.T. (Drawing Teacher) on

P.S.

1.4.91 and subsequently, they have amended the seniority list by showing him at Sl.No.513 as per seniority list dated 12.1.98. While, they have submitted that the applicant had got issued two legal notices which were addressed to Respondent-2, they have contended that there was no representation from the applicant and hence, he has not exhausted all the available remedies. In the circumstances of the case, we are unable to agree with this contention of the respondents because it is seen from the facts that the applicant had made necessary representations, which should have been considered by the respondents, in accordance with law, rules and the aforesaid judgement of the Hon'ble Supreme Court in Ishwar Singh Khatri's case (Supra).

5. However, Sh. Vijay Pandita, learned counsel has submitted that the judgement of the Hon'ble Supreme Court in the aforesaid case, only deals with seniority and has got nothing to do with fixation of the pay of the applicant as T.G.T. (Drawing Teacher). In their reply, another contention has also been raised by the respondents that although they have fixed the seniority of the applicant by their order dated 12.1.98, the process of fixation of pay could not be taken up because of non-cooperation of the applicant. In the circumstances of the case, we are unable to appreciate this argument of the respondents because it is ^{is} ~~the~~ duty of the respondents to correctly fix the pay of the applicant in the available pay scales, in accordance with the relevant rules and instructions. In any case, it is also noticed that in the rejoinder, the applicant has emphatically

js.

denied the averment of the respondents that non-fixation of the pay is due to any non-cooperation on his part with which we fully agree.

6. We have carefully considered the submissions and pleadings made by the learned counsel for the respondents.

7. From the facts mentioned above, it appears that the respondents have no doubt fixed the seniority of the applicant as T.G.T. (Drawing Teacher) in the seniority list which they have published by order dated 12.1.98. The main grievance of the applicant in the present case is that his pay has not been fixed in accordance with his seniority and merit position in the select panel issued by the respondents on 31.12.83. However, it is noted that the applicant himself has stated that he has been appointed as T.G.T. (Drawing Teacher) on 1.4.91 which fact has also been confirmed specifically by the respondents in their reply.

8. The Hon'ble Supreme Court in Ishwar Singh Khatri's case (Supra) has directed as follows:-

"Before parting with the case we must notice one other aspect. During the pendency of the proceedings before the Tribunal and also in this Court, Delhi Administration appears to have appointed some fresh candidates. We do not want to disturb their appointments nor it is proper for Delhi Administration to disturb them. Needless, however, to state that the candidates in the panels when appointed pursuant to our order must get their seniority as per their rankings in the select panels over the persons appointed in the interregnum."
(Emphasis added)

js.

9. From the reply filed by the respondents, it is not clear whether the revised seniority allotted by them to the applicant at Sl.No.513 as per order dated 12.1.98, is in accordance with the aforesaid directions of the Apex Court, which clearly states that the persons in the selected panels should get their rankings in the select panels over the persons appointed in the interregnum. In the circumstances of the case, the applicant, who states that he was in the select panel of 1982-83, shall be entitled to pay in the relevant pay scale from the date of his appointment as T.G.T. (Drawing Teacher) and fixation of notional seniority from the date as indicated by the Hon'ble Supreme Court. The judgement of the Hon'ble Supreme Court in M.R. Gupta Vs. Union of India & Ors., SCC 1995 (5) 628, regarding fixation of pay will also be applicable to the facts in this case.

10. As none has appeared for the applicant and ^{is} ~~seeing~~ the reply filed by the respondents, it cannot be stated that the process of fixation of pay, as stated by them, has been completed or not during the pendency of the OA.

11. In the facts and circumstances of the case, the OA is allowed with the following directions:-

The respondents are directed to consider the applicant's claim for fixation of pay, seniority and other consequential benefits in accordance with the directions of the Hon'ble

J.S.

Supreme Court in Ishwar Singh Khatri case
(Supra) within two months from the date of
receipt of a copy of this order with
intimation to the applicant, if not already²
done so far. No order as to costs.

dr

(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

/sunil/