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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 859/1998

New Delhi this the 14th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Krishan Swaroop Retd. Drawing
Teacher from GBM School Shahdara,
Delhi

Now R/O 1410, Brahmपुरi, Meerut (UP)

..Applicant

(By Advocate Shri V.P.S. Tyagi)

Versus

1. Union of India (Through Secretary
Ministry of Home Affairs), New Delhi.
2. Director, Directorate of Education,
Delhi (Middle School Cell) Govt. of NCT
Delhi.
3. Joint Director of Education (Administration),
Directorate of Education, Old. Sectt.,
New Delhi.
4. Head Master, GBM School, Circular Road,
Shahdara, Delhi.

..Respondents

(By Advocate Shri Vijay Pandita)

O R D E R (ORAL)

Hon'ble Shri V.K. Majotra, Member (A)

The applicant retired as Drawing teacher on 30.11.1993 from GBM School, Circular Road, Shahdara, Delhi. His grievance is that whereas the pay of junior teacher Shri U.S. Bansal has been stepped up vide Directorate of Education (Pay Fixation Cell) impugned letter dated 4-12-1995 (Annexure A-1) and re-fixed, the case of stepping up and re-fixation of pay of the applicant has not yet been finalised in terms of provisions of Directorate of Education of Delhi (Middle School Cell) Office Order dated 14.3.92

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(Annexure A-4) despite his representation to Respondent 3 vide dated 19.8.1996(Annexure A-2) and protracted correspondence in this respect having been made earlier through applicants DDO/Viz Respondent 4. According to the applicant's counsel the applicant was appointed as Drawing Teacher w.e.f.8.1.1962 in Govt. Primary/Middle Schhol in the pay scale of Rs.130-300 and promoted as Drawing teacher w.e.f. 5.11.1965. At this stage, learned counsel of the applicant states that in the OA it has been wrongly mentioned that the applicant was appointed as Drawing Teacher and the pay scale has also been wrongly mentioned. The applicant had ample opportunity to modify the averments made in the OA but he has failed to do so. We, therefore, proceed ^{with the facts as} stated in the OA. Further it is stated by the applicant that his junior Sh.U.S. Bansal was appointed in the same grade w.e.f. 21.8.1961 and promoted after the applicant on 1.12.1966. The applicant claims that as per Annexure A-8 dated 19.7.1993, Directorate of Education issued instructions with regard to stepping up of pay of Drawing teachers(Special cadre) convey^{ing} approval under FR 27 and the applicant's case was forwarded by the DDO/Respondent 4 vide letter dated 6.9.1993(Annexure A-9) making out comparative statement with ~~one~~ another junior Shri Keshoram Sharma. Later on applicant's junior S/Sh.M.L.Goel and U.S.Bansal were granted special grade of pay in the pay scale of Rs.340-400 w.e.f. 5.9.1971 by the impugned order dated 4.12.1995 (Ann.A.1), ^{but} no action was taken by the respondents

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on the representation of the applicant. According to the applicant he is entitled to the pay equal to juniors whose pay has been stepped up and refixed viz-a-viz their juniors whereas the applicant's pay has not been stepped up and refixed in accordance with the relevant rules and extant the orders of Government. The applicant's representation dated 19.8.96(Ann.A.2) is still pending with Respondent 3. The applicant has sought a direction to the respondents to step up the pay at par with those of juniors as per the impugned order dated 4.12.1995(Annexure A.1) and refix the same in accordance with the provisions of law with consequential benefits. ^{pp 2.} The respondents in their reply have/exception that taken the OA is hopelessly time barred and thus not maintainable. According to the respondents he has challenged the impugned order dated 4.12.1995(Ann.A.1) in 1998. The respondents have contended that whereas U.S.Bansal was appointed as Assistant teacher on 21.8.1961, the applicant was appointed as such on 8.1.1962. Thereafter the applicant was promoted as Drawing teacher on 5.11.1965 while Sh.U.S.Bansal was promoted as Drawing teacher on 1.12.1966. Shri U.S.Bansal was drawing more pay both as Assistant teacher and Drawing teacher. The respondents have submitted that though the teachers in the list circulated on 14.3.1992 were allowed stepping up pay, it was ^b subject to fulfilment of conditions laid down by the Govt.of India, Ministry of Home Affairs,

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Department of Personnel OM dated 15.2.1983 which are as under:-

- (i) The scale of pay of the lower post (Ordinary Grade) and higher post in which both Junior and Senior are entitled to draw pay should be identical.
- (ii) The Senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to selection grade.
- (iii) The junior person should have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increments granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher post (extract of the OA is annexed as Annexure R-1)."

Referring to Annexure R-2, the respondents have drawn the comparative statement between the applicant and Sh.U.S.Bansal with regard to their dates of appointment, dates of promotion as Drawing teacher, seniority and rates of pay on different dates. As per this comparative statement, the applicant was drawing pay Rs.126 w.e.f. 8.1.1964 viz-a-vis U.S. Bansal who was drawing pay Rs.130 w.e.f. 21.8.64. On promotion as Drawing teacher on 15.11.1965 the applicant pay was fixed at Rs.130. Sh. U.S. Bansal was promoted w.e.f. 1.12.1966 and ^{since} prior to that on 21.8.66 he was drawing pay ^{at} Rs.138 in the lower grade, on promotion he was fixed at Rs.145/-.

3. We have heard both the learned counsel of the parties and carefully considered the material available on record.

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Learned counsel of the respondents at the outset raised objection regarding limitation. Learned counsel of the applicant stated that the applicant has filed an MA for condonation of delay giving detailed reasons for condonation of delay. According to him the proposal for stepping up the pay of the applicant was forwarded on 26.12.1992 (Ann.A.6). By Ann.A.7 dated 20.4.1993, Directorate of Education sought particulars of applicant's junior to decide the matter. By Ann.A.8 letter dated 19.7.93, the Directorate of Education asked the concerned official to prepare a list of cases for approval under FR 27 of all the eligible Drawing teachers (special cadre) to which the applicant belonged. Thereafter the applicant's case was forwarded by Ann.A.9 letter dated 6.9.93 to the Directorate of Education. By Annexure A-11 letter dated 13.10.1993, the Directorate of Education informed the Head Master, GEMS, Circular Road, Shahdara, Delhi that "similar cases have been sent to the Head Qtrs. and the decision is awaited. The same will be intimated as and when the final orders/clarifications are received from the Head Qtrs. The service book of the official is returned accordingly." Thereafter the impugned order dated 4.12.1995 (Ann.A.1) regarding stepping up of pay in respect of M.L.Goel, Drawing teacher and Sh.U.S.Bansal, Drawing teacher was issued and therefore the cause of action accrues from this date. The learned counsel of the applicant giving the above details and placing reliance on the judgement of the Apex Court in M.R.Gupta Vs. Union of India (1995(5)Scale 29(SC) in which it has been held" The claim on the basis of proper pay fixation, is a right which

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subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary, computed correctly in accordance with the rule. 11

Having regards to the details given by the applicant ^{and} ratio in the matter of M.R.Gupta's case (Supra) we reject the objection raised by the respondents in connection with limitation in filing the OA after a long period.

4. Learned counsel of the applicant stated that stepping up of pay of all eligible drawing teachers (Special cadre) ~~was~~ to be *undertaken* under FR 27 as per Annexure A-8 dated 19.7.93. That ~~was~~ *not* done till date in respect of the applicant though the respondents ~~have~~ stepped up the pay in respect of Sh.M.L.Goel vis-a-vis junior Sh.C.B.Sharma by Annexure A-1 dated 4.12.1995. According to the applicant his representation at Annexure A-2 is still pending with the respondents. Learned counsel of the respondents has submitted that applicant had made his representation in 1993 and the applicant filed this petition in 1998. Learned counsel of the respondents ^{has} drawn our attention to Annexure A-4 dated 16.3.92 which encloses list of stepping up of pay in respect of Drawing teachers (Special cadre) category and pointed out that whereas the applicant was appointed as Assistant teacher on 8.1.62 and promoted on selection grade on 5.9.71 and was at serial No.95 in the list *and* Sh.U.S.Bansal appointed on 21.8.61, accorded special grade on 5.9.71 was at Sl.No.116 but having been appointed earlier than the applicant. Shri U.S. Bansal was drawing more pay as Assistant Teacher as well as Drawing Teacher. Sh.K.R. Sharma ^{who} was initially appointed as PT on 1.8.53 promoted

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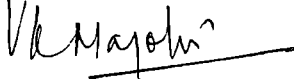
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as Drawing teacher on 1.12.66^{and} was shown at serial No.103 vis-a-vis
whose name
the applicant was shown at Sl.No.95, and hence drew more pay
than the applicant as Assistant teacher and Drawing Teacher
though he was junior to the applicant. Learned counsel of
the respondents referred to the conditions mentioned in the
Department of Personnel OM dated 15.2.1983 which needed
fulfilment before stepping up of pay; these conditions have
already been quoted above. Whereas conditions 1 and 2 are
satisfied in the applicant's case in our view condition 3 is
not satisfied because as per the documents made available
by the respondents juniors to the applicant have been drawing
higher pay than the applicant in the lower grade. On promotion
their pay has been fixed at higher rate of pay in the higher
grade than the applicant even though
the applicant had been promoted a little earlier than these persons^h
The differential has^h resulted from the pay fixation
of the respective officials under normal fixation under the
Rules, the explanation rendered by the respondents also satisfies
the norms prescribed by the G.I.M.F. OM No.F.2(78)E.III(A)/66
dated 4.2.1966. We are fortified in our view taken above by
the judgement in UOI & Ors Vs. V. Suryanarayana Rao (1992(2)SLJ 79
(SC) in which the Apex Court has held that the junior got
higher pay due to earlier promotion on ad hoc basis, and that
conditions of stepping up were^{up were} not fulfilled. We are also relying on ratio
of N.L.Somayajulu and Ors. Vs. The Telecom Commission and Ors
with connected cases (Administrative Tribunal Full Bench Judgements
1994-1996) in which the following principles have been referred to:-
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- (i) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that; and
- (ii) a claim for steppin up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.

5. Having regard to the above discussion and in the facts and circumstances of the case, we do not find any merit in the OA . The same is accordingly dismissed. No costs.


(V.K.Majotra)
Member (A)


(Smt.Lakshmi Swaminathan)
Member(J)