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CENTRAL ADMINISTRATION TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

New Delhi, this the 11th day of January, 1996

O.A.No.1816 of 1995

Hon'ble Mrs Lakshmi Swaminathan, Member (J)
Hon'ble Mr R.K. Ahooja, Member (A)

1. Shri Harpal Singh,
S/O Shri Narendra Pal Singh,
R/O A-77, Saraswati Vihar,
Delhi.
2. Shri B.P. Gupta,
R/O 50/20, Sector II DIZ Area,
Gole Market, New Delhi.
3. Smt. Harbans Kaur Arneja,
R/O WZ 162-A, G Block,
Hari Nagar, Jail Road,
New Delhi.
4. Smt. Shakuntala Devi Sharma,
R/O 117, Sector 37,
Faridabad (Haryana).
5. Shri Satish Sonkar,
R/O A-151, Paschimpuri,
New Delhi.
6. Shri Som Parkash,
R/O 7781/3, Kachha Pucka Qrs.,
Shakti Nagar, Delhi.

... . . . Applicants.

(through: Mr B.S. Charya, Advocate).

versus

1. National Capital Territory of Delhi,
5, Sham Nath Marg,
Delhi, through its
Chief Secretary.
2. The Director of Education,
National Capital Territory of Delhi
Office of the Directorate of Education,
Old Secretariat, Delhi.
3. The Joint Secretary (Education)
Govt. of National Capital Territory of Delhi
Old Secretariat, Delhi.
4. Union Public Service Commission,
Dholpur House,

Dr

Shahjehan Road,
New Delhi, through its
Secretary.

(through Advocate: Mr Amresh Mathur).

5. Shri M.A.Siddiqui,
School Inspector(Physical)
Physical Education Branch,
Chattrassal Stadium,
Model Town,
Delhi.Respondents.

(R-5 through Advocate: Mr D.R.Gupta).

ORDER

PER R.K.AHOOJA, MEMBER(A)

The applicants, six in number, are working as Supervisors(Physical Education) under the Directorate of Education, Govt. of N.C.T.(National Capital Territory), Delhi.

2. The applicants No.1 to 4 were originally appointed as Senior Physical Education Teachers (Sr.PET's for short) on various dates between 12.8.1961 to 5.12.1970. Thereafter, they were promoted as Post Graduate Teachers(P.G.T.), Physical Education, in 1990 and then promoted as Supervisors(Physical Education) w.e.f.10.4.1992. The applicant No.5 started as Junior P.E.T. in 1972, was promoted as Sr.P.E.T. in 1974 and then made Supervisor(Physical Education) in 1983. The applicant No.6 started as P.G.T.(PE) in 1984 as a direct recruit and was promoted as Supervisor(PE) in 1992. All of them have come before this Tribunal aggrieved by the order of promotion dated 1.3.1995, whereby respondent No.5 Mr M.A.Siddiqui, posted as School Inspector

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(Physical) has been promoted as Assistant Director of Education(Physical Education) on adhoc basis in supersession of the alleged rights of the applicants. The matter in dispute relates to a long drawn struggle regarding inter se rights of the teaching staff which came over to the erstwhile Delhi Administration in 1970 on the take-over of certain Primary, Middle and Higher Secondary Schools, being run by the Municipal Corporation, Delhi(M.C.D. for short). The said take-over was notified on 27.5.1970. Certain terms and conditions were also laid down regarding the absorption of employees of M.C.D. as a result of this Notification.

3. The applicants state that as per these terms and conditions(Annexure P-II) all the employees of M.C.D. were to be placed in a separate cadre, to be called as "Special Cadre" while those in the Education Department of Delhi Administration, other than those in the "Special Cadre" were to be called as "Administrative Cadre". The seniority of any employee in the Special Cadre as fixed by the M.C.D. before absorption was not to be disturbed but where such a seniority list was not in existence, the same would be drawn up in accordance with the extant rules in M.C.D. immediately before the absorption. Paras 11(2) and 11(5) of the terms and conditions provided as follows:

"11(2) Promotion to the post of Education Officer/Assistant Director of Education(Rs.475-900)

On
Promotion quota for the promotion to

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the post of Education Officer/Assistant Director of Education (475-900) from the post of Principals/Deputy Education Officers, etc. (Rs.425-900) will be fixed separately for the Special Cadre and the Administration Cadre in proportion to the number of Principals/Deputy Education Officers etc. in the respective Cadres, as calculated on the last day of the last academic session.

11(5) Promotion of School Inspectors (Physical)

School Inspectors (Physical) in the scale of Rs.250-425 will be eligible for promotion to the post of Physical Education Supervisor (Rs.350-650) in accordance with the quota fixed for such promotion on the basis of the respective strength of School Inspectors (Physical) (Rs.250-425) and Physical Education Teachers (190-425) of the Special Cadre and Senior Physical Education Teachers (190-425) of the Administration Cadre."

4. The contention of the applicant, in a nut shell is that in terms of above provisions, the School Inspectors (PE) from the M.C.D., eight in all, were first required to compete with the Sr.P.E.Ts of Delhi Administration for the post of Supervisor (PE) and such promotions were to be made in proportion to the relevant strength of 'special' and 'administration' cadres and only thereafter Respondent No.5 could be considered for promotion to the post of Assistant Director (PE). The grievance of the applicants is that instead of following the laid down procedure and the terms and conditions of absorption, respondent No.5 has been promoted to

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the post of Assistant Director directly from the post of School Inspector(PE) which is also in total disregard of the Recruitment Rules for the said post.

5. The above contention is controverted by respondents No.1 to 3 as well as Respondent No.5. Respondent No.5 claims that since the qualifications as well as the functions of the School Inspectors of MCD were the same as Supervisors(PE) in Delhi Administration, the former had been agitating for some time for parity of pay-scales with the latter. The Municipal Corporation finally considered their claim and brought their pay-scales from Rs.325-650 to the same scale as of the Supervisors w.e.f.27.5.1970. Lateron, the Delhi Administration increased this pay scale to Rs.400-800 since the Supervisors were given that pay-scale with retrospective date. The parity was also maintained following the recommendations of the 3rd Pay Commission as well as the 4th Pay Commission. The School Inspectors were also granted Gazetted status just like Gazetted Supervisors w.e.f. 1980. In view of this position, there could not be any question of promotion of the School Inspectors to posts of Supervisors and thus any provision regarding their parity with Sr.P.E.Ts also became a nullity with the revision of pay-scales of School Inspectors. The respondents contend further that the Sr.P.E.Ts of Delhi Administration had challenged the decision of the Government to revise the pay-scales of the

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Inspectors to the level of the Supervisors by way of two writ petitions bearing No.CW No.660/75 and 480/78, which resulted in issuance of a direction by the High Court of Delhi to the respondents - Delhi Administration to constitute a Committee comprising the representatives of Government of India and Delhi Administration to go into the various issues raised by the petitioners in the aforesaid two writ petitions. The said Committee under the Chairmanship of Secretary Education (Delhi Administration) had found no objection in the School Inspectors supervising the work of Sr.PETs. The same report of the Committee was accepted by the petitioner. Therefore, the matter having been settled once, it could not be re-opened by the applicants in the present application being hit by the principle of res judicata. The respondent No.1 points out that by the amendment now made in 1995, the School Inspectors have been made eligible for being considered for promotion alongwith Supervisors and in any case, out of the six applicants, only one namely, applicant No.5 is eligible to be considered and the remaining applicants can have no grouse as they are not even entitled to be considered for the post of Assistant Director.

6. We have heard the arguments in this case at great length. The learned counsel on both the sides have ^{also} submitted their written arguments which have been taken on record.

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In our view, the issues of law and fact, which arise in the present application can be summarised as follows:

- i) Whether the School Inspectors(Physical) of MCD are to be considered along with Sr.PETs or the Supervisors of the Delhi Administration for promotion to the post of Assistant Director(PE)?
- ii) Whether the terms and conditions of absorption of MCD teachers are subject to re-interpretation on revision of pay-scales?
- iii) Whether the matter has already been settled in the High Court in the Writ petitions No.660/75 and 480/78?
- iv) Whether the next available post of Assistant Director(Edn.) is to be filled up in accordance with the amended rules dated 24.7.1995(Annexure R-4) including the School Inspectors(PE) as an eligible category.

7. As regards Issue No.1, the learned counsel for the applicants argued that the revision of pay-scales of the School Inspectors of MCD was irregular ab initio since this was done when the School Inspectors had already been absorbed in the Delhi Administration and, were, therefore, no longer within the jurisdiction of the MCD. He pointed out that while on the one

hand the MCD claims to have revised the pay scale of School Inspectors w.e.f. 17.5.1970, to the level of Rs.325-650, the Delhi Administration also issued orders revising the pay scale of the School Inspectors to Rs.400-800. He submitted that both the authorities could not concurrently be in a position to revise the pay-scales of School Inspectors. In our view this matter is not open to adjudication now since the orders M.C.D were issued vide Resolution No 66 of 1971 and those of the Delhi Administration were issued on 10.3.1975. It is not open at this stage for the applicants to question the revision of pay-scales of the School Inspectors after a lapse of over 20 years. The question then arises as to whether the School Inspectors with a higher pay scale could be equated with Sr.P.E.Ts of Delhi Administration who had a lower pay scale of Rs.190-420. Obviously, this cannot be done. In our view, once the revision of pay-scales of School Inspectors became a reality, their equation could only be with the Supervisors (PE). As contended by the learned counsel for respondent No.5, the Sr.PETs had in fact agitated this matter in the High Court against the upward revision of the pay-scales of School Inspectors but had not succeeded. We agree with Shri D.R.Gupta, learned counsel for Respondent No.5 that the effect of the decision in those writ petitions was that the supervisory role of School Inspectors over the Sr.P.E.Ts had ~~not~~ been accepted by the Sr.PETs, the category to which the

applicants belonged. We thus find that the pay and supervisory functions of School Inspectors and Supervisors (PE) being the same, the posts of School Inspectors in (PE) have to be considered as equivalent to Supervisors (PE) in Delhi Administration.

8. As far as the 2nd issue is concerned, the learned counsel for the applicant vehemently argued that there could not be any change in the terms and conditions of absorption to the detriment of the then existing category of teachers of Delhi Administration. He submitted that the two categories, namely, the Special Cadre and the Administrative Cadre were created to maintain the separate entities of the MCD teachers and to ensure that further promotions were made in accordance with the relative strength as existed at the end of the previous academic year. This was done in order to ensure that the induction of MCD teachers did not adversely affect the promotion prospects of the administration staff. He pointed out that the retirement age of the Delhi Administration teachers was 58 years and that of the MCD teachers was 60 years. The terms and conditions provided that the retirement of the erstwhile MCD teachers will take place at the age of 60 years and this provision was being retained by the School Inspectors. He contended that the School Inspectors could not keep their cake and eat it also by retaining

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some of the provisions of the terms and conditions this and denying the others. The learned counsel in context relied on the judgment of the Supreme Court in K.C.Gupta and others vs. Lt. Governor of Delhi ((1994) 28 ATC 425). We have perused the said ruling but do not see how it helps the case of the applicants. The issue in K.C.Gupta's case (supra) was the relative seniority of two categories of TGTs and Head Masters/PGTs in the Special Cadre, namely, the teachers who had come over from the MCD. The T.G.T.(Middle) in the lower pay-scale and the TGT(Hr.Secy.) in the Higher Pay Scale were merged together with retrospective effect. The T.G.T.(Middle) on that basis claimed seniority from the date of appointment but the Hon'ble Supreme Court ruled that they will take the seniority from the date of merger of TGT(Middle) and T.G.T.(Hr.Secondary). It was also decided that so long as the T.G.T. Administration Cadre and TGT Special Cadre(Higher) were available, no TGT could be considered for promotion to the higher post of PGT. It could be argued that on this analogy the School Inspectors should not be considered for promotion till all the Supervisors (Ft) of Delhi Administration on the date of absorption have been considered or in other words the School Inspectors should rank junior en-block to the Supervisors. However, the terms and conditions could no more be changed to the disadvantage of the MCD staff as to the disadvantage of the administration staff. Once the reality of up-gradation of pay-scales of School Inspectors is

accepted then it follows that any equation between Supervisors and Sr. PETs, as laid down in the terms and conditions becomes meaningless and hence a nullity. Only equals would be equated and in terms of pay-scale, the School Inspectors had to be equated with Supervisors and the operation of the term and conditions of absorption has to be seen accordingly. As regards the question of retention upto 60 years for the MCD staff, this is not a matter of parity between two categories but of general conditions of service of MCD staff which was sought to be protected. We therefore find that with the retrospective up-gradation of the pay-scales of School Inspectors, they had to be considered ~~at~~^{on par} with the Supervisors (PE) in the Delhi Administration though it could be ~~argued~~ ascertained that they could be considered for further promotion only after exhausting the list of Supervisors of Delhi Administration as existed on the date of absorption.

9. As regards the third issue the learned counsel for respondent No. 5 laid great emphasis on the fact that the applicants were barred under the principles of res judicata, the issue having already been adjudicated upon by the High Court. The counsel for the applicants contested this point on the ground that the six applicants in the present case were not party in the aforesaid proceedings before the High Court of Delhi and in any case, the High Court had not passed a final order in the aforesaid writ petitions. In our view, the

principle of res judicata will not come into play since the present application is against the impugned order of promotion of respondent No.5 and not against the revised pay-scales of School Inspectors. We have already found that the question of revision of pay-scales of School Inspectors is settled and there is a bar of limitation now on re-opening of this issue after a gap of 20 years.

10. The 4th point which we are considering and which is more relevant at this point of time, is regarding the operation of the amended rules notified on 24.7.1995. The contention of the learned counsel for respondent No.5 is that already one of the School Inspectors had been promoted as Distt. Education Officer, a post equivalent in pay-scales and functions to that of a Assistant Director and in this manner the eligibility of School Inspectors had already been accepted de facto. He pointed out that respondent No.5 could not be made liable for the delay on the part of the Administration in making the necessary amendment in the Rules which should have been done as far back as in 1975 when the revised pay-scales of School Inspectors were in force. He further argued that in any case, the post was being filled in only now and the Recruitment Rules, which had to be applied were the existing Recruitment Rules prevalent at the time of filling in of the post. The learned counsel for the respondents, however, contested this argument and argued that the recruitment rules which had to be taken into account

were those which were prevalent at the time the vacancies arose and not when the post was being filled up. The learned counsel relied on various case laws, including AIR 1988 SC 2068, AIR 1990 SC 404, AIR 1990 SC 1233 and AIR 1984 SC 1499. Our attention was also invited by the learned counsel for Respondent No. 5 to a later judgement in (1995) 31 ATC 105. We have gone through the aforesaid citations carefully.

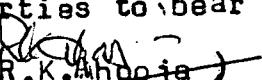
11. In AIR 1988 SC 2068 P. Ganeshwar Rao & others vs. State of Andhra Pradesh and others, the point at issue was that the State Government had taken a decision before the amendment of the Rules came into force to fill up the vacancies to the posts of Assistant Engineers by direct recruitment according to the law prevailing then. This decision was challenged on the ground that the Rules in the meanwhile had been amended. The Hon'ble Supreme Court observed that had it been the intention of the State Government while promulgating the amendment that amendment should be applicable to the vacancies which arose prior to the date of amendment, the State Government would have addressed a letter to the Public Service Commission to make the recruitment in accordance with the amended rules. That being not so it was held that the recruitment ^{made as per} ~~lasted in~~ earlier law was valid. In AIR 1990 S.C. 404 Sukhdarshan Singh et al. vs- State of Rajasthan, it was held that the selection process is to be completed in accordance with law as it stood at the commencement of the process

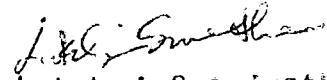
In AIR 1990 Supreme Court 1233, N.T.Bevin vs. Karnataka Public Service Commission and others, it was held that the selection made according to the old Rules when the Amendment saved the pending selection, was valid. The judgment in AIR 1984 SC 1499 Sengara Singh & Ors vs. The State of Punjab and others, does not lay down any ~~related~~ ^{incidentally} question of law in the present O.A.

12. In terms of the above cited case law, the crucial point to be determined in the present O.A. is whether the rules have been amended during the pendency of the process of selection. The process can be said to have commenced when, in the matter of direct recruitment, an advertisement calling for applications is issued or in the case of promotions, the matter is referred to the Central or State Public Service Commission or the Departmental Promotion Committee, as the case may be for making the necessary recommendations. The process of selection cannot be deemed to have commenced automatically from the date a post falls vacant since it is open to the Govt. to fill the same or not to fill it. In the present case, we find that the Notification amending the Rules was issued on 24.7.1975 and is applicable to vacancies which may have become available prior to the date since the selection process had not been already initiated.

13. In view of our above findings in respect of the four issues, we find no merit in the application and the same is accordingly dismissed, leaving the parties to bear their own costs.

/sds/


(R.K.Ahuja)
Member(A)


(Mrs Lakshmi Swaminathan)
Member(J) 2/1.