

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-2277/95, OA-2423/96, OA-2599/96 & OA-2180/97

New Delhi this the 2nd day of June, 1998.

Hon'ble Sh. T.N. Bhat, Member(J)  
Hon'ble Sh. S.P. Biswas, Member(A)

OA-2277/95

1. Sh. Amar Nath,  
S/o Sh. Ram Chand,  
Sr. Drawing Teacher,  
Govt. Model Senior Sec.  
School, Vivek Vihar,  
Delhi.
2. Sh. M.P. Sharma,  
S/o Pt. Jagdish Pershad,  
Sr. Drawing Teacher,  
Govt. Boys Sr. Secondary  
School, 'G' Block,  
Kalkaji, New Delhi.
3. Sh. D.B. Seth,  
S/o Dr. N.S. Saxena,  
Sr. Drawing Teacher,  
Govt. Boys Sr. Secondary  
School, G.T. Road,  
Shahdara, Delhi-32.

.... Applicants

(through Sh. M.P. Raju, advocate)

versus

1. Lt. Governor of Delhi(Rajniwas),  
N.C.T. of Delhi,  
16-Rajpur Road, Delhi.
2. Director Education,  
Old Secretariat,  
NCT of Delhi.

.... Respondents

(through Sh. Arun Bhardwaj, advocate)

OA-2423/96

1. Sh. Ram Dhan,  
S/o late Sh. Gaini Ram,  
R/o C-59C Freedom Fighter  
Colony, Neb Sarai, New Delhi.
2. Sh. O.P. Giridhar,  
S/o late Sh. Bhagavan Das,  
R/o H-92/4, Shivaji Park,  
Punjabi Bagh,  
New Delhi-26.

.... Applicants

(through Sh. George Paracken, advocate)  
versus

2

9

1. The Lt. Governor,  
NCT of Delhi,  
Raj Niwas,  
Delhi.
2. The Director of Education,  
Directorate of Education,  
Old Secretariat,  
Delhi.

..... Respondents

(through Sh. Arun Bhardwaj, advocate)

OA-2599/96

1. Sh. Charanjit Singh,  
S/o late Sardar Sant Singh,  
R/o 176, Pocket A-3,  
Sector-VIII, Rohini,  
Delhi-55.

(through Sh. George Paracken, advocate)

versus

1. The Lt. Governor,  
NCT of Delhi,  
Raj Niwas,  
Delhi.
2. The Director of Education,  
Directorate of Education,  
Old Secretariat,  
Delhi.

..... Respondents

(through Sh. Arun Bhardwaj, advocate)

OA-2180/97

1. Mrs. Sheela Tanwar,  
W/o Sh. S.P. Tanwar,  
R/o WZ-636, Nangal Rai,  
New Delhi-46.

..... Applicant

(through Sh. George Paracken, advocate)

versus

1. The Director of Education,  
Directorate of Education,  
Old Secretariat,  
Delhi.

(through Sh. Arun Bhardwaj, advocate) ..... Respondents

2

10

ORDER

Hon'ble Shri S.P. Biswas, Member (A)

The background facts, issues raised, legal points involved and the reliefs claimed in these 4 O.As. are identical and hence they are being disposed of by a common order.

2. All the applicants in these O.As draw strength on the decision of the Hon'ble High Court in CWP No.1479/93 in the case of M.L. Sharma Vs. Director of Education & Ors., Writ Petition No.1312/73 (Transferred as T-75/85) in the case of Thakur Dass Sapra & Ors. Vs. Lt. Governor & Ors., SLP (c) No.7882/87 (dismissed by the Hon'ble Supreme Court vide orders dated 22/9/87), orders dated 17.4.89 of the Tribunal in CCP No.186/88 and the dismissal of SLP (c) No. 10669/89 on 21.9.89 directing the respondents to implement the judgement in WP No. 1312/73 and OA No.2671/93 decided by this Tribunal on 19.8.94 in the case of G.C. Pandey Vs. Lt. Governor and Administrative, NCT of Delhi.

3. In the case of M.L. Sharma (supra), the learned Single Judge of the High Court allowed the petition and passed the following orders on 29.12.85:-

"There can be no doubt that the Government can alter the terms and conditions of its employees unilaterally and there is also nothing wrong in giving preference to candidates having higher educational qualifications for securing the best

service for being eligible for promotion. But the question is whether this could be done retrospectively."

It was also held that:-

"In my view, the petitioner cannot insist that he has a right to touch any particular class though he may have a justified grievance if his pay and allowance are affected because of retrospective amendment of the recruitment rules. The pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the senior grade the petitioner who was in the senior grade would be entitled to the higher scale of pay."

4. In CWP No.1479/73, the High Court ordered that:-

"the pay scale of the teachers in the common cadre of senior grade teachers cannot be different and that higher scale has been given to some teachers in the senior grade who are junior to the petitioner, the petitioner will also be entitled to the higher pay scale."

The above direction and decision was accepted and implemented by respondents.

5. The applicants would also rely upon the judgement/order of this Tribunal dated 23.2.87 in T-75/85 (CWP No.1312/73) in which it was held that although the competent authority can amend the rules but the amendment cannot in all cases be made retrospective in operation.

2  
P  
1

6. While the basic grievances of all the applicants in these O.As relate to issuance of directions to respondents declaring them eligible to the benefit of the Sr. Scale retrospectively from 1.1.73/3.1.74 but in specific terms, the reliefs sought for are different.

7. Thus, the three applicants in OA-2277/95, are before us in the second round of litigation, and have since received the benefit of Sr. Scale from 7.3.90 applying the principle/ratio arrived at by this Tribunal in OA-401/90 decided on 11.11.94. They are also aggrieved by orders dated 13.11.92 and particularly of 23.8.95. The applicant in OA-2599/96 have not received any benefit so far and is aggrieved by the Office Order No. 158 dated 13.11.92 wherein juniors to the applicant therein have been promoted denying the benefit to him. The applicant represented on 28.12.92. He, therefore, seeks relief of the benefit of the judgement in CWP No. 1312/73 (T-75/85). The applicant in OA-2180/97 got promotion in the Sr. Scale from 28.2.97 but claim the same from 3.1.74. She represented for the first time on 30.9.86. The two applicants in OA-2423/96 are aggrieved by the office order dated 13.11.92 and are not in receipt of any benefit so far. They had represented on 16.11.96 and 22.10.96 respectively.

8. The respondents have resisted the claims of all the applicants mainly on the ground that the reliefs had to be provided only to those who were

parties in writ petitions/OAs/contempt petitions decided by Supreme Court, High Court or the Tribunal and that the present applications are barred by limitation.

9. We have heard the learned counsel for the parties. We find the respondents do not deny some of junior teachers having been promoted ignoring seniors. Their explanation is:-

"Department had no option but to promote all the petitioners regardless of their seniority. The Court did not at any time state that the whole cadre of the Drawing Teachers should be given the P.G.T. scale."

10. We are convinced that the applicants are entitled to get the benefit of the judgement of the Tribunal in the aforesaid cases including that of judgement of Delhi High Court in M.L. Sharma's case (supra).

11. The basic issue regarding offering of benefit of Sr. Scale is no more res integra. It has been held in OA-401/90 that all the senior scale teachers should be at par with other Sr. scale teachers who have been given P.G.T. scale under the orders of the High Court of Delhi or under orders of this Tribunal.

12. While dealing with the question of limitation, the Tribunal took the view that the under the circumstances of the cases, the ratio/judgement of the Hon'ble Supreme Court in the

case of Bhoop Singh Vs. U.O.I. (JT 1992(3) SC 322) was not applicable and, therefore, while adjusting the equities between the parties it was decided that the applicants therein should be given P.G.T. scale not from the year 1973 but from the date on which they presented the O.As. before this Tribunal. We are not inclined to depart from the said judgement in the case. The decision of this Tribunal dated 20-1-95 in OAs 1405/94, 1406/94 & 1407/94 is relevant in this connection.

13. The only question that remains to be adjudicated is from what date the applicants in these O.As. should be granted consequential benefits. This issue also stands already decided by a Bench of this Tribunal on 7.10.96 in OA-218/93 in which one of us (namely <sup>Sh.</sup> ~~Justice~~ T.N. Bhat) was Member. This Tribunal in the aforesaid OA (218/93) decided that the consequential benefits have to be granted to the applicants and will have to be restricted to a date one year prior to the filing of this O.A. so far as the payment of arrears is concerned. We do not find any reasons, much less convincing ones, to adopt a different principle.

14. In the result, the O.A.No.2423/96, 2599/96 & 2180/97 are partly allowed with the following directions:-


- (i) The respondents shall give benefit of the judgement of CWP No. 1312/73 to the applicants in these

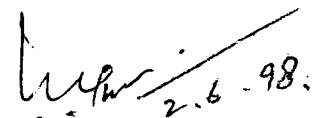
13

O.As. as well and shall give them promotion on notional basis from the dates persons junior to them were promoted in 1973-74 i.e. 3.1.74 but payment of actual arrears shall be made only from the date one year prior to the filing of the individual O.As.

(ii) We make it clear that we have not passed any order in respect of three applicants in OA-2277/95 as following. This Tribunal's intervention, ~~order~~ they have already received an order dated 3.11.95. This was arising out of this Tribunal's decision in OA-401/90 decided on 11.11.94. The present O.A. has been filed to get the order of 11.11.94 ~~modified~~. An O.A. challenging the orders of the Hon'ble Tribunal is not maintainable.

The O.As are disposed of as above. No costs.

  
(S.P. Biswas)  
Member (A)

  
(T.N. Bhat)  
Member (J)

/vv/