

Central Administrative Tribunal
Principal Bench

O.A. 1650/97

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New Delhi this the 31st day of July, 2000

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Smt. Usha Malik,
W/o late Shri R.G. Malik,
R/o A-46, Saraswati Vihar,
New Delhi. Applicant.

(By Advocate Shri B.S. Mainee)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary, Delhi,
5, Sham Nath Marg,
Delhi-53.
2. Director of Education,
GNCT of Delhi, Old Secretariat,
Delhi-53.
3. Deputy Director of Education (North),
Lucknow Road, Timarpur,
Delhi.
4. PAO, 19 (Education),
South Patel Nagar,
New Delhi.
5. Principal,
Govt. Boys Sr. Sec. School,
Rani Bagh, Delhi-34. Respondents.

(By Advocate Shri Vijay Pandita)

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

The applicant is aggrieved by the order passed by the respondents dated 7.3.1997 on the basis of which her family pension has been fixed, taking into account the basic pay of her husband Shri R.G. Malik, PGT (Maths) as Rs.3200/- in place of of Rs.3500/- as his last pay drawn.

2. The applicant is the widow of late Shri R.G. Malik, PGT, who died on 12.4.1996. According to her, the

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retirement benefits and family pension due to her under the Rules should be calculated on the basis of last pay drawn by her late husband at the time of his death, and not Rs.3200/- which, according to her, is an arbitrary figure. She has also claimed arrears due to her with interest. The applicant has also prayed that a direction may be given to the respondents to sanction the arrear bill of Rs.26,100/- which has been submitted by her (Annexure 10/B).

3. Learned counsel for the applicant has relied on the Office Order No. 56 dated 12.4.1994 passed by the respondents. To this order, a list has been attached showing the name of the applicant's husband at Serial No. 432. This is a list of Trained Graduate Teachers (TGTs) (Male), who were already granted selection grade from different dates, showing the revised dates mentioned against each of their names. The learned counsel has submitted that the applicant's husband has been granted the selection grade w.e.f. 1.3.1975. He has also relied on the entries in the service book of Shri Malik (Page 60 of the paper book). In this, it has been stated that consequent upon his promotion as PGT (Maths), his pay has been fixed/revised Rs.900 + 15PP w.e.f. 27.4.1983. He has, therefore, submitted that as the applicant had already been promoted as TGT selection grade w.e.f. 1.3.1975 and promoted as PGT w.e.f. 27.4.1983, he was entitled to be placed in the senior scale w.e.f. 27.4.1995. Learned counsel has submitted that in the clarification letter issued by the respondents dated 28.3.1988, they have clarified that for the purpose of counting service in the newly created senior grade, the entire period of service rendered in the erstwhile selection grade may be taken into

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account. He has, therefore, contended that 12 years service is to be counted from the date he got selection grade as PGT. He has relied on the judgement of the Supreme Court in **Chandigarh Administration Vs. Shri Sumesh Kumar etc.** (1997 (1) SLJ 83). The learned counsel has also vehemently submitted that following the judgement of the Supreme Court in **Bhagwan Shukla Vs. Union of India & Ors.** (JT 1994 (5) 253), the respondents could not have reduced the salary of Shri Malik without giving even a show cause notice and that too after his death. He has also stated that after filing the O.A. on 17.7.1997, Respondent 3 had issued a show cause notice on 29.9.1997 for withdrawing the senior scale w.e.f. 1.3.1987 which also they cannot do. He has relied on a number of other judgements, referred to in the written statement.

4. The respondents in their reply have submitted that the correct pay of Shri L.G. Malik was Rs.3200/- and accordingly all the retiral benefits have been granted on this basis. They have relied on an opinion obtained by them from the Senior Accounts Officer dated 27.8.1997. However, in the rejoinder filed by the applicant, he has submitted that the opinion dated 27.8.1997 has been obtained after the O.A. has been filed and the matter was sub-judice. Reference has also been made to the clarification to Point No. (viii) to Govt. of India letter dated 2.3.1988 and it is stated that the service rendered in the erstwhile selection grade of his then post (TGT) may be counted as service rendered in the newly created senior grade, i.e. selection scale of that

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post. The respondents have submitted that they have correctly taken into account the basic pay of the late employee as Rs.3200/- and not Rs.3500/-. They have also stated that the applicant had been issued a show cause notice to withdraw the senior scale of pay from Rs.3500/- to Rs.3200/- w.e.f. 1.3.1987. Hence, learned counsel has prayed that the O.A. may be dismissed.

5. MA 1861/97 and MA 1978/98 had also been listed along with OA 1650/97. MA 1861/97 has been filed by the applicant praying for bringing on record the judgement dated 13.8.1998 in OA 289/98 and OA 1650/97. In this MA, the applicant has also stated that OA 1650/97 was pending before the court at that time. In the other MA 1978/98, applicant has sought permission to place on record written submissions. From the records, it appears that no reply has been filed. In the circumstances of the case, the prayers in MA 1861/97 and MA 1978/98 are allowed.

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

7. The relevant portion of the clarification letter issued by the respondents dated 28.3.1998 reads as follows:

"The teachers availing selection grade since 5.9.71 onward have now been placed in senior scale as per clarification at Sr.No.2 of letter dated 3.11.87 will be determined from the date, such teachers are getting benefit of Selection grade of 12 years will be counted from 1.1.86. It may be stated that vide Point No. 2 of clarification given in our letter No. F.5. 180/86-UT.I dated 3.11.87, it has been clarified that those who are already in the pre-revised selection grade will be placed in the senior scale. It was further stated that since they were screened would

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In case, a teacher has been awarded Selection Grade from 1.1.1986 and promoted in higher post on officiating basis, whether he will be entitled for Senior scale of the post in which he/she is promoted taking into consideration his/her length of service in the lower grade. be required. Accordingly, it is clarified that for the purpose of counting service in the newly created senior grade, the entire period in the erstwhile selection grade may be taken into account."

8. Learned counsel for the applicant has submitted that as the husband of the applicant has been promoted as PGT (Maths) w.e.f. 27.4.1983, in terms of the above clarification, his entire period of service rendered in the erstwhile selection grade has to be counted and he should be placed in the senior grade after 12 years after promotion as PGT. It is noticed from the submissions made by the learned counsel for the respondents in a similar case, **Ram Narain Singh and Ors. Vs. Union of India & Ors.** (OA 196/97 with connected case) that 12 years of service should be counted from the date of promotion as PGT for being granted the senior scale. It is also relevant to note that the respondents themselves had given the senior scale to late Shri Malik which they had later withdrawn.

9. The contention of the learned counsel for the applicant that he had not been given a show cause notice in the present case cannot be accepted. The applicant's husband had made a representation which, although belatedly, the respondents have considered and given a reply based on the opinion they have obtained from the Senior Accounts Officer on 27.8.1997. In this opinion, reference has also been made to the clarification to Point No.(viii) of Govt. of India letter dated 2.3.1988 in which it has been mentioned that "service rendered in the erstwhile selection

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grade of his (late Shri Malik) then post (TGT) may be counted as service rendered in the newly created senior grade i.e. selection scale of that post". However, from para (viii) of the clarification letter quoted in para 7 above, it is noted that for the purpose of counting service in the newly created senior grade, "the entire period in the erstwhile selection grade may be taken into account". In the facts and circumstances of the case, we find merit in the contentions of the learned counsel for the applicant that after the applicant was promoted as PGT, he would be entitled to be placed in the senior scale after 12 years of service in that grade, i.e. w.e.f. 24.3.1995, which is prior to his date of death. In other words, the reduction of his pay from Rs.3500/- to Rs.3200/- is held to be unwarranted.

10. In the result, for the reasons given above, the O.A. succeeds and is allowed with the following directions:

(i) The respondents to reconsider the case of the applicant for grant of retiral benefits and family pension after the death of her husband, late Shri R.G. Malik, PGT (Maths), in accordance with the relevant rules and instructions and having regard to the aforesaid observations. Necessary action in this regard, including payment of arrears and difference in the retiral benefits shall be taken

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within two months from the date of receipt of a copy of this order.

(ii) The above amounts shall be paid with 12% simple interest per annum from the due date to the date of actual payment.

No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

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

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