

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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OA No. 2138/97

NEW DELHI THIS THE 10th DAY OF FEBRUARY, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Dr. R.C.Gupta
S/o Shri J.P.Gupta
R/o 117, Kapil Vihar, Pitampura,
Delhi-34.

Applicant

(BY ADVOCATE SHRI D.R.GUPTA)

VS.

Director of Education
Government of NCT, Delhi
Old Secretariat
Delhi-110054.

...

Respondents

(SHRI KANWAL NAIN, DEPTT. REPRESENTATIVE)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the Administrative Tribunals Act, 1985, the main relief claimed by the applicant is for consideration of his claim for "grant of Senior Scale of Rs.2000-3500 from the due date on completion of 12 years of service in Yoga Coach in the scale of Rs.1640-2900 with all consequential benefits"

2. Briefly stated, the applicant was Yoga Coach under the Government of N.C.T. Delhi in the Directorate of Education. By order dated 12.8.1987, the retirement age of teachers was enhanced to 60 years and the senior pay scale of Rs.2000-3500 was extended to Post Graduate Teachers in the scale of Rs.1640-2900 on completion of 12 years service. It is alleged that the benefit was

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extended to Sports and Swimming Coaches by order dated 23.1.1992, but not given to the applicant as Yoga Coach. Hence on the eve of completion of his 58th year of age, i.e., 31.10.1995, he filed O.A. No.1990/95 for extending the benefit of the order dated 12.8.1987 to his case also. During the pendency of the application, the respondents therein decided to extend the said benefits to the applicant. Accordingly the O.A. was disposed of on 16.2.1996 with the following directions:-

"In the result, in the light of what is stated above the impugned order by which the applicant stands retired from service is set aside declaring that the applicant is also entitled to continue in service till the age of 60 years in accordance with order of the respondents dated 17.11.1995. The respondents are directed to reinstate the applicant in service forthwith, at any rate within fifteen days, from the date of receipt of a copy of this order, allow him to continue in service till the age of 60 years and pay him the arrears of pay and allowances treating that he continued in service beyond 31.10.1995 within a period of two months."

The directions were carried out, but the applicant felt that they were not fully complied with inasmuch as he was not given the Senior Pay Scale of Rs.2000-3500 on completion of 12 years service. He, therefore, filed C.P.No.180/96 in O.A. No.1990/95, which was dismissed on 3.10.1996. The applicant, thereafter filed the present O.A. for the said reliefs. The claim has been denied by the respondent.

3. After hearing the learned counsel for the parties and perusing the record, what we find is that in reply to paragraph 4.1 of the application, the respondent has specifically stated:

[Signature]

"... the applicant was appointed as Yoga Coach in Nov. 1973. He was promoted to the post of Project Officer in the scale of 2000-3500 on 3.11.1983. He was no more Yoga Coach and continued to hold this post upto 18.9.1995. He sought voluntary reversion to the post of Yoga Coach and was reverted on 19.9.1995."

In his rejoinder, the applicant has not denied the aforesaid facts. On the contrary, he has asserted, "This is a matter of record." It means the allegations are true. If that is so, only after 10 years, he was given the promotion post with pay scale of Rs.2000-3500. From 3.11.1983 to 18.9.1995, he continued to enjoy that pay scale. As the post of Project Officer could not be equated with that of a teacher or a coach, perhaps the Project Officer could not claim the benefit of order dated 12.8.1987 and extension of his age of retirement from 58 to 60 years. It, therefore, appears that just 1 month and 12 days before attaining the age of 58 years, the applicant cunningly and fraudulently sought voluntary reversion to the post of Yoga Coach so as to claim continuity in service till the age of 60 years. That having been achieved, he now fraudulently wants Senior Pay Scale of Rs.2000-3500 again for the period between 19.9.1995 to 31.10.1997, i.e., the extended period of his service pursuant to this Tribunal's order dated 16.2.1996 in O.A. No.1990/95, suppressing the fact that for about a period of 12 years, i.e., from 3.11.1983 to 18.9.1995, he was drawing his salary in the pay scale of Rs.2000-3500 as a Project Officer. This *prima facie* makes out a case for prosecution of the applicant by lodging a Court complaint under Section 340 Cr. P.C.

4. Further, the claim is also barred by principle of *res judicata*, or on principle similar to one mentioned in Order 2, Rule 3 C.P.C.

Yours

5. For the reasons aforesaid, this application is dismissed with costs. Counsel fee Rs.500/-.

6. Let notice be issued to the applicant to show cause why a Court complaint be not lodged against him by exercising powers under Section 340 of the Code of Criminal Procedure for offences committed in relation to these proceedings on the facts hereinbefore stated in paragraph 3 of this order, after registering a separate Miscellaneous case.

K.M. Agarwal
(K.M. AGARWAL)
CHAIRMAN

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)