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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA No. 2380/97

New Delhi, this the 29th day of January, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Hari Ram Rohilla,
s/o Late Sobha Ram,
R/o D.2/1A, Ashoka Road,
Adarsh Nagar, Delhi.

...Applicant

(By Advocate: Shri S.S. Dahiya)

Vs.

1. State of Delhi through its Secretary,
School Education Department, NCT, Delhi.
2. Director of Education,
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariat, Delhi. ...Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicant who retired as Physical Education Teacher (P.E.T., for short) on 30.9.1997 has filed this O.A. seeking the following reliefs:-

- "(i) Issue a Writ of Mandamus or any other appropriate writ, order or direction calling upon the respondent to grant the Selection Scale/grade in consonance with the policy letter No. A.11014/7/75-U.T.I. dated March 4, 1976. As it has been granted in the case of others teachers."
- "(ii) The respondents be put to heavy penalty/ compensation for harassing the applicant and for violating applicants fundamental rights under Article 14/16 of the Constitution of India."
- "(iii) Any other order or writ or direction deemed fit and proper be passed."
- "(iv) Cost be awarded in favour of the applicant and against the respondents."

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2. According to the applicant he was entitled to the benefit of grant of selection grade in pursuance to the Govt. of India's letter dated 4th March, 1976 which laid down the policy for revision of pay scales of school teachers and granted selection grade to 20% permanent as well as temporary teachers. The aforesaid letter/policy was made effective from 1.1.1973 and was applicable to all the school teachers. It is averred by the applicant that while applying the aforesaid decision the respondents discriminated against P.E. Teachers and as a consequences the applicant was not granted the selection grade even though he was fairly senior and was entitled to the benefit like Drawing teachers and Yoga teachers besides other types of teachers.

3. The applicant's claim is resisted by the respondents mainly on the ground that the applicant was given the senior scale of Rs. 1640-2900/- w.e.f. 1.11.1993 which was equivalent to the pay scale of Post Graduate Teachers even though the applicant's qualification was only matriculation. The plea of limitation has also been raised in the counter filed by the respondents. Giving a brief history of the applicant's service, the respondents have stated that initially the applicant was appointed as Jr. P.E.T. on 1.11.1972 and after being declared surplus from N.F.C. he was appointed afresh in the Directorate of Education, N.C.T. Delhi as Jr. P.E.T. the pay scale of which was Rs. 425-640/- w.e.f. 1.1.1973. The Govt. of India admittedly upgraded the scale to Rs. 1400-2600/- w.e.f. 5.9.1981 vide a letter issued by the Government of India

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On 27.3.1982. Thereafter the applicant was given the senior scale of P.E.T. w.e.f. 1.11.1993, as already mentioned. According to the respondents it is only after completion of 12 years service in the senior scale and acquiring qualification for the next higher post that the applicant would be entitled for grant of selection scale but that before completing the aforesaid 12 years of service, the applicant retired on 30.9.1997.

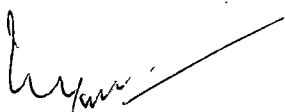
4. The applicant has also filed his rejoinder in which he has claimed that his appointment as Jr. P.E.T. under the respondents was by way of transfer from one organisation to another and not because the applicant had been declared surplus and that, therefore, the date of initial appointment of the applicant would continue to be May, 1958 which is the date when the applicant was initially appointed as N.D.S. teacher. The applicant further states that similarly placed teachers have already been given the selection scale according to the Govt. of India's order dated 4.5.1992 and he has annexed a copy of such an order as Annexure VI to the OA. It is vehemently denied by the applicant that the grant of senior scale is based upon acquisition of additional qualification as alleged by the respondents. According to the applicant the selection scale is to be granted on the basis of seniority. It is also denied by the applicant that this O.A. is hit by limitation.

5. We have heard the learned counsel for the parties at some length.

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6. During the course of his arguments the learned counsel for the respondents referred to a letter dated 12.8.1987 from the Ministry of H.R.D. (Department of Education), New Delhi addressed to the Chief Secretary of Delhi Administration and Others. A copy of the aforesaid letter is on the file. By the aforesaid letter revised pay scales of school teachers have been prescribed. A primary school teacher is eligible for the senior scale after 12 years of service, the senior scale being Rs. 1400-2600/-. It is further provided that selection scale will be granted after putting in 12 years of service in senior scale and attainment of qualification laid down for Trained Graduate Teachers. It is specifically stated in para 3 (v) of the aforesaid letter that primary school teachers and Trained Graduate Teachers would be required to obtain higher qualification in order to entitle them to the grant of selection scale. The respondents' counsel further argues that according to the applicant's own admission he had not acquired any further qualification than what he possessed at the time of his initial appointment which is matriculation.

7. The learned counsel further refers to the fact that the Ministry of H.R.D. issued another letter dated 3.11.1987, a copy of which is also on the file, in which answers have been provided to various questions raised regarding the implementation of the letter dated 12.8.1987. In reply to question Nos. 3 & 4 it has been stated that selection scale (revised) is to be given only to those who have completed 12 years of service in the senior scale of the grade. It further provides that for those teachers who have completed 18 years of service the



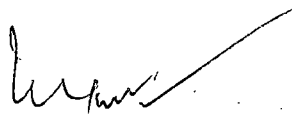
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requirement of acquiring the qualification for the next higher grade may be waived but for those who have completed 12 years it would be necessary to acquire the higher qualification before being considered for grant of selection scale.

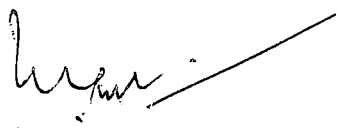
8. Learned counsel for the respondents has accordingly laid emphasis on the contention that the applicant having been granted senior scale only in the year 1993 could not claim selection scale before completion of 12 years of service in the senior scale.

9. Learned counsel for the applicant, however, states that according to another letter dated 6.2.1989 issued by the same Ministry, the services rendered prior to 1.1.1986 has also to be counted for the purpose of finding out the total length of service that would entitle a person to the selection grade. According to the applicant his service was to be counted from 1958.

10. As regards the applicant's contention about applicability of the Govt. of India's letter dated 4.3.1976, the learned counsel for the respondents has argued that the applicant having already been granted the senior scale of Rs. 1640-2900/- which is equivalent to the selection scale provided to primary teachers and similarly placed teachers of other categories, the applicant cannot claim for further selection scale unless he completes 12 years of services in the senior scale.



11. In reply, the learned counsel for the applicant places reliance upon a judgement of this Tribunal dated 6.2.1998 passed in OA No. 183/97 (Ms. Deepa Chaudhary & ors. vs. Chief Secretary, Govt. of N.C.T. of Delhi & Ors.) We have carefully gone through the judgement and find that in that case also, which related to Yoga teachers, a similar contention had been raised by the respondents regarding the requirement to complete 12 years of service in senior scale. Rejecting the contention the Tribunal held that w.e.f. 1.4.1984 all the teachers were entitled to get the benefit for selection grade as and when they became eligible for the same. It was further held that where the concerned teacher joins the post and completes the probation period and thereafter happens to complete 3 years of continuous service from the date of appointment, he/she would be eligible for grant of selection grade. On identical facts the Tribunal in that case held the claimants entitled to selection grade w.e.f. 1.4.1984 or on any subsequent date after completion of probation plus three years of continuous service. Accordingly a direction was given to the respondents to pass appropriate orders granting selection grade strictly in accordance with the seniority without upsetting the seniority position on the basis of date of appointment. It was further directed that if any of the juniors has been considered for grant of selection grade those teachers who had been appointed prior to the dates of the appointment of those juniors will also be entitled for consideration for grant of selection grade. The Tribunal clarified that the grant of selection grade shall be strictly confine to 20% of the total post.

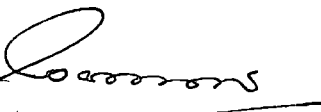


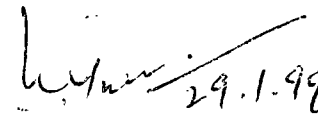
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12. The aforesaid judgement of the Tribunal squarely covers the facts of the instant case with the only difference that while in the aforesaid case the applicants were Yoga teachers, in the instant case the applicant is a P.E.T. However, the respondents have not taken the plea that the aforesaid letter dated 4.3.1976 would not apply to P.E.T.

13. In view of the above we allow this O.A. and direct the respondents to consider the applicant for grant of selection grade in pursuance to the letter dated 4.3.1976 from the date the same became due to the applicant and to accordingly refix his pensionary benefits. We however make it clear that the applicant shall not be entitled to any arrears calculated on that basis.

13. With the above order the O.A. is disposed of, leaving the parties to bear their own costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)