

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2492/97
T.A. No.

199

DATE OF DECISION 23.2.98

Sh. Jai Narain Kaushik

Petitioner

Mrs Meera Chhibber

Advocate for the Petitioner(s)

VERSUS

Lt. Governor of Delhi and Ors

Respondent

Sh. Vijay Pabditia

Advocate for the Respondent

CORAM

The Hon'ble Shri S.R. Adige, Vice Chairman(A)

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

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal *no*

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

Central Administrative Tribunal
Principal Bench

O.A. 2492/97

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New Delhi this the 23 th day of February, 1998

Hon'ble Shri S.R. Adige, Vice Chairman(A).

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

Jai Narain Kaushik,
S/o Late Shri Ram Swaroop,
R/o C-605, Saraswati Vihar,
Delhi.

...Applicant.

By Advocate Mrs. Meera Chibber.

Versus

1. Lt. Governor of Delhi,
Raj Niwas, Raj Niwas Marg,
Delhi.
2. Chief Secretary,
Govt. of NCT of Delhi,
5, Shamnath Marg,
Delhi.
3. Secretary (Education),
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.
4. Director of Education,
Govt. of NCT of Delhi,
Old Secretariat,
Delhi.
5. Dy. Director of Education
(Distt. North),
Directorate of Education,
Govt. of NCT of Delhi,
Lucknow Road,
Delhi.

...Respondents.

By Advocate Shri Vijay Pandita.

O R D E R

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

The applicant is aggrieved by the order passed by Respondent 5 dated 9.9.1997 by which he has been asked to retire from service w.e.f. 3.11.1997 after

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completion of extension of period of his second term as Vice Principal in Govt. Boys Senior Secondary School, Pratap Nagar, Delhi. The applicant has impugned the validity of this order on the ground that it has been passed without application of mind and without taking into consideration the fact that in the meantime on 5.9.1996 he had been given a National Award for teachers. The applicant has also challenged the validity of the circular dated 12.3.1996 issued by the respondents wherein it is stated that those teachers who have received the National Award after 1990 will not be granted any extension in service.

2. The Tribunal by interim order dated 31.10.1997 had directed the respondents to maintain status quo which order has been continued till date. The applicant was awarded State Award in 1991 and is working as Vice-Principal in Govt. Boys Senior Secondary School. Normally he would have retired on superannuation at the age of 58 years on 30.11.1995. He had filed an earlier O.A. 2230/95 which was disposed of by order dated 19.9.1996 directing the respondents to consider the case of the applicant along with others for extension of service. Accordingly, the respondents granted extension of service to the applicant w.e.f. 4.11.1995 to 3.11.1996 and again w.e.f. 4.11.1996 to 3.11.1997. As mentioned above, in the meantime, he was awarded the National Award for teachers on 5.9.1996 for the year 1995. He had requested the respondents to extend his service by another year on account of his National

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Award but no reply was given. Thereafter, the impugned order dated 9.9.1997 has been issued.

3. Mrs. Meera Chibber, learned counsel for the applicant, relying on Rule 110(3) of the Delhi School Education Rules, 1973 (hereinafter referred to as 'the 1973 Rules') made under the Delhi School Education Act, 1973 submits that when there is a provision that the period of service of a teacher, Vice-Principal or Principal who has received a National or State Award may be extended by such period as the Administrator may, by general or special order specify, the impugned letter not extending the services of the applicant is not valid. She has relied on the judgement of the Tribunal in Mrs. Usha Rani Verma Vs. Govt. of India (O.A.661/96), decided on 22.8.1996. She has submitted that by the impugned letters/circulars the rules cannot be abridged so as to take away the applicant's right for extension in service. She has also submitted that the procedure laid down under the Delhi School Education Act for framing the rules has not been followed and, therefore, the policy laid down by the respondents that in case of teachers who have received the National Awards after 1990 they shall not be entitled for any extension of service but only to a cash award of Rs.5000/-, a medal of merit along with merit scroll, is uncalled for and invalid. According to her, the applicant is entitled to continue in service for another year w.e.f. 4.11.1997 to 3.11.1998 on the basis of his being National Awardee.

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4. The respondents in their reply have controverted the above ^{allegations} ~~facts~~. They have submitted that in accordance with the directions in O.A. 2230/95 the applicant/^{who} was a State Awardee has already been granted extension of service for two periods upto 3.11.1997. They have submitted that after 1990 no State or National Awardee ^{in service} ^{of} has been given any extension as a matter/policy. Shri Vijay Pandita, learned counsel, has, therefore, submitted that the applicant has no right to seek extension of his services on the basis of the 1995 National Award. He has distinguished the case of Mrs. Usha Rani Verma (supra), on the ground that she was an awardee prior to 1990. The respondents have relied on another judgement of the Tribunal in Jagdish Kumar Bector Vs. Lt. Governor of Delhi & Ors. (O.A. 2245/90), decided on 18.1.1991. Shri Pandita has also submitted that the applicant being a Government servant, as he was a teacher in a Government school, was governed by Fundamental Rule 56 under which he has to retire on attaining the age of 58 years and the Delhi School Education Act and Rules were not applicable to him. For these reasons, he has submitted that since no other person similarly situated like the applicant who has been given the State or National Award for teachers after the change of policy in 1990 has been given extension in service, there is also no discrimination. The learned counsel has, therefore, submitted that the application may be dismissed.

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5. The applicant has filed a rejoinder in which it has been submitted, inter alia, that the judgements relied upon by the respondents are not applicable to his case; that the Government cannot follow a policy which is against the Delhi School Education Rules and Act; that the Administrator cannot exercise the power of extension of service in an arbitrary manner; a blanket ban on extensions takes away his power to examine the individual cases for grant of extension which is, therefore, invalid; that the power vested in the Administrator by a statute cannot be taken away by the Executive by issuing letters/circulars; that there is no logic in denying the extension to teachers who have been recognised by the State when, in fact, they are themselves employing retired teachers who have not attained the age of 65 years in Government schools; and that the policy circular issued by the respondents is mala fide and arbitrary, without application of mind. Mrs. Meera Chibber, learned counsel has, therefore, urged that since the circular is contrary to Rule 110(3) of the 1973 Rules, the same should be struck down.

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

7. The respondents' counsel has taken a preliminary objection that the applicant was to retire under FR 56 at the age of 58 years and the provisions of the Delhi School Education Act and the rules made thereunder do not apply to him as he was Vice Principal in a

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Government school. Rule 110(1) of the 1973 Rules refers to an employee of ^a recognised private school, whether aided or not, and sub-rule (3) of this Rule provides that in cases of teachers, Principals or Vice-Principals, in a recognised private school, subject to the general or special orders passed by the Administrator, he may be allowed to continue in service for ~~the~~^{is} period as specified, in cases where the person has been awarded a State or National Award. From these provisions, it is seen that these rules do not apply to teachers in Government schools. However, by the circular issued by the respondents dated 8.7.1985, they had taken a decision that the Government teachers, including Head Masters, Vice-Principals and Principals, who are recipients of State/National Awards may be granted extension in service on merit after their attaining the age of superannuation, in accordance with the conditions mentioned therein, ~~for teachers obtaining State and National Awards.~~ In Mrs. Usha Rani Verma's case (supra) also, we note that the applicant was a Principal of Government Composite Model Girls Secondary School in respect of which the Tribunal had passed the order dated 22.8.1996. In that case also, the same preliminary objection had been taken by the respondents regarding maintainability of the application. The preliminary objection had been rejected in that case and we respectfully agree with the same. Therefore, in this case as the applicant is Vice-Principal in Government Boys Secondary School, the question whether he is entitled for extension in service on the basis of the National Award given to him in 1996 has to be considered. The respondents' circular dated 8.7.1985 read with the instructions dated

26.7.1991 have been referred to in the impugned memorandum dated 12.3.1996 which has been superseded by the impugned circular dated 11.4.1997. By the circular of April, 1997, the decision taken by the respondents has been clarified, to the effect that in cases of ^{the} National or State Awards given to teachers, Principals or Vice-Principals, they will be entitled to extension in service if the award has been given prior to the year 1990 but after this date they will be entitled ^{only} to cash award of Rs.5000/-, a medal and merit scroll. Shri Pandita, learned counsel, has submitted that after this decision had been taken to discontinue the earlier practice of giving extension in service ^{to} of teachers with State or National Awards, no teacher who had got award after 1990 had been given extension in service. The applicant in the present case has already obtained extension of service for a period of two years on year to year basis upto 3.11.1997 for receiving the State Award in 1981. Mrs. Meera Chibber, learned counsel has submitted that there is no reason why the applicant should not be given a further extension of one year in service as he has received ^{the} National Award in 1996 and she has impugned the decision of the respondents. In this connection, we find that the judgement of the Tribunal is Jagdish Kumar Bector (supra) is relevant. In this case, reference has been made to the letter of the Delhi Administration dated 29.5.1990 in which the decision had been taken to amend the Rules so as to incorporate the provisions of giving cash award of Rs.5000/- to the State Awardees of private and aided schools. The applicant having received the National Award after 1990 cannot

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insist that the respondents should follow their previous policy of granting extension in service. Therefore, in the absence of any general or special orders/instructions issued by the respondents for granting extension of period of service to a teacher who has received a National or State Award, the applicant does not have any enforceable right for extension in service but only to the cash award, medal and merit scroll, as applicable to all teachers in his category.

8. It is not the case of the applicant that any other teacher, Vice-Principal or Principal who had been given National or State Award after 1990 has been given extension of service and, therefore, there is no question of discrimination against the applicant. It is also relevant to note that the respondents have taken ^a uniform decision, both for teachers in Government schools and private schools, who have been given State or National Awards after 1990. The reliance placed by the learned counsel for the applicant on Rule 110(1) and (3) of the 1973 Rules which applies to teachers in private schools is not applicable to the applicant and hence the question of the Administrator alone being able to issue necessary general or special orders under these provisions, and not the executive, is not relevant to the facts of this case. In this case, the respondents had in consonance with the provisions applicable to teachers in private schools also granted ^{this} facility to teachers in Government schools and Government aided schools by the circular dated 8.7.1985. This being a circular issued by the respondents can, therefore, be amended by another circular and the point urged by the learned counsel for the applicant that the executive cannot infringe on the powers vested on a statutory authority

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is not the question here. The decision taken by the respondents not to give extension in service to teachers who have received Awards after 1990 has been applied uniformly and, therefore, we find no basis to say that the applicant's case has been rejected without application of mind to the facts of the case.

9. The judgement of the Tribunal in Mrs. Usha Rani Verma's case (supra) is also not applicable to the facts of this case as she was the recipient of the State Award for the year 1986 i.e. prior to the change of the policy issued by memo dated 12.3.1996 and circular of 11.4.1997. In the Tribunal's judgement in M.C. Mishra Vs. Lt. Governor & Ors. (supra), it has also been noted that the teachers in those cases were awardees prior to 1990 and, therefore, were also entitled to be given extension in service in accordance with the decision of the respondents. That case is also, therefore, distinguishable from the facts in the present case. We have also considered the other submissions but they do not help the applicant here.

10. In the facts and circumstances of the case, therefore, the application fails as the applicant cannot be continued in service as Vice-Principal after he has attained the age of, superannuation outside the rules/instructions. However, in view of the interim order passed by the Tribunal dated 31.10.1997, the applicant shall be entitled to be paid pay and allowances for the period he has worked from 4.11.1997 till date, but he shall not be entitled to count this period for any other benefits, e.g. pension.

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11. In the result, the O.A. is dismissed. Interim order dated 31.10.1997 is vacated. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

S.R. Adige

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

'SRD'