

Two

12

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

OA No. 2176 of 1994 with MA No. 3646 of 1994

O.A./T.A. NO. <sup>with</sup> ~~185~~ of 95/19  
MA No. 207 of 1995

Decided on : 26.9.95

~~S/shri D.P. Sharma and~~ ... Applicant(s)  
J.K. Dass Gupta  
( By Shri D.R. Gupta Advocate )

versus

U.O.I. & Others ... Respondent(s)

( By Shri Arun Bhardwaj Advocate )

CORAM

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER(A)

THE HON'BLE SHRI P. SURYAPRAKASAM, MEMBER(J)

1. To be referred to the Reporter or not ? *yes*
2. Whether to be circulated to other Benches *no*  
of the Tribunal ?

*[Signature]*  
(K. MUTHUKUMAR)  
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2176 of 1994 and  
MA. No. 3646 of 1994

with

O.A. No. 185 of 1995 and  
M.A. No. 207 of 1995

New Delhi this the 13th day of September, 1995

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)  
HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

1. OA No. 2176 of 1994 and  
MA No. 3646 of 1994

Shri D.P. Sharma  
S/o Shri J.L. Sharma,

R/0-B-286, Saraswati Vihar,  
Delhi-34.

...Applicant

2. O.A. No. 185 of 1995 and  
MA No. 207 of 1995

Shri J.K. Dass Gupta  
Lecturer (PGT) Drawing,  
Govt. Comp. (M) Boys  
Sr. Sec. School,  
Rani Garden,  
Delhi-31.

...Applicant

By Advocate Shri D.R. Gupta

Versus

1. Union of India through  
Secretary,  
Min. of Human Resources Development,  
Department of Education,  
Shastri Bhawan,  
New Delhi.

2. Lt. Governor, Delhi,  
Delhi Administration,  
Delhi.

3. Chief Secretary,  
Delhi Administration,  
Delhi.

4. Director of Education,  
Delhi Administration,  
Delhi.

...Respondents

By Advocate Shri Arun Bhardwaj

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

These applications are filed by the

14

applicants who are Senior Drawing Teachers Grade I of the schools run by the Delhi Administration and who are qualified to teach class XI. They have also filed Miscellaneous Applications for condonation of delay. They have prayed in the OAs for direction of this Tribunal to extend the benefit of the judgment dated 5.1.1994 of the Hon'ble Delhi High Court, in the matter of K. Khan Vs. Municipal Corporation of Delhi and Others to them also as they are similarly situated as Shri Khan in the aforesaid case. Since the facts relating to this case and the prayer are similar, these two O.As. alongwith the MAs were heard together and are disposed of by this common order.

2. The applicant in O.A. No. 2176 of 1994 was initially appointed in the Directorate of Delhi Administration in 1957 and since 1959, he has been working in the Government Higher Secondary School as Senior Drawing Teacher. He acquired Post Graduate qualification in June, 1966 and was given the benefit of Post Graduate scale by the respondents in 1973. The applicant in O.A. No. 185 of 1995 was also working as Senior Drawing Teacher (Grade-I) and consequent on his acquiring the Post Graduate qualification, was given the benefit of PGT scale with effect from 1973.

3. The grievance of the applicants is that they are entitled to the Post Graduate scales from the date they were asked to teach Class-XI and after they had become qualified to teach such classes. The applicant in O.A. No. 2176 of 1994 has averred that he is entitled to this scale from his initial date of appointment whereas the applicant in the second O.A. No. 185 of 1995 avers that he is entitled to this scale with effect from 1960 when he was appointed to

h

15

the said post and was asked to teach Drawing subject to class-XI. The applicants have averred that one Mr. Khan who was also a teacher in one of the schools of Municipal Corporation of Delhi (MCD for short) which was later on transferred to Delhi Administration, had successfully contested before the Delhi High Court for his promotion to the post of Senior Teacher (Post Graduate) in the then existing Post Graduate scale of Rs.250-470 with effect from 1.6.1966. The applicant in O.A. No. 2176 of 1994 has submitted that he is in fact senior to Shri Khan inasmuch as he was appointed in 1957 whereas, Shri Khan was appointed only in 1960 in the school run by MCD. The applicants' grievance is that since the Delhi High Court has upheld the claim of Shri Khan for the Post Graduate scale from the year of acquisition of the qualification, the same cannot be denied to the applicants on the principle laid down by the High Court of Delhi and also on 'equal pay for equal work' to similarly placed category on grounds of parity in employment. They have, therefore, in this application prayed for a direction to the respondents to extend the benefit of the judgment dated 5.1.1994 of the High Court of Delhi in LPA No. 73 of 1980 in the matter of K. Khan Vs. Municipal Corporation of Delhi, Delhi Administration and others to the applicants and also for a direction to the respondents to consider preponing the date of appointment of the applicants to the PGT scale to the date from which Shri Khan is deemed to have been appointed as PGT and allowed the consequential pay in the PGT scale and arrears thereon.

4. The respondents have strongly contested the claim. It is submitted on behalf of the respondents

16

that Shri Khan was a Teacher in the MCD and the benefit of the judgment pertained to the period of service in the MCD, Delhi in 1966 which the MCD had already implemented. It is contended by the respondents that applicant in O.A. No. 2176 of 1994 was in service of Delhi Administration and there is no comparison between the services of the two sets of employees in two different administrations and, therefore, they have contested the claim that the applicant in O.A. No. 2176 of 1994 is senior to Shri Khan. It is also stated that the Middle and Higher Secondary Schools run by the MCD were taken over by the Delhi Administration in 1970 and all the staff were absorbed in Delhi Administration including Mr. Khan. It was, however, mentioned in the terms and conditions of transfer that these teachers, who were absorbed from the MCD Schools would form a separate cadre to be known as a Special Cadre. It is also submitted on behalf of the respondents that the seniority of the teachers coming under the Special Cadre was to be maintained separately from that of the teacher who were in Delhi Administration, and whose cadre was known as Administrative Cadre. In view of this, the respondents contend that the applicants, who were appointed in the Delhi Administration Cadre cannot claim benefit of the judgment in the case of Mr. Khan. The respondents further aver that the Delhi Administration created posts of Post Graduate Teacher (Drawing) only in 1973 and, therefore, the question of granting the PGT scale from the date of appointment in the case of applicant in O.A. No. 2176 of 1994 from 1957 and from 1960 in the case of the applicant in O.A. No. 185 of 1995 did not arise. They have also clarified that there is no designation as Senior

h

Teacher (Post Graduate) and the actual designation is Post Graduate Teacher (Drawing), which is now designated as Lecturer Drawing. Consequent on the creation of post in 1973 and framing of the Recruitment Rules thereon, Senior Drawing Teachers who fulfilled the prescribed qualifications were appointed according to their seniority to the said post of PGT(Drawing) and there was no post of TGT (Drawing) in 1966 in Delhi Administration and Mr. Khan being in MCD at that time was given the benefit on the basis of the order of the Court. In view of this, there was no question of extending the benefit of the judgment of the Court in the case of K. Khan Vs. MCD to the applicants, who were appointed for the first time to the post of PGT only after creation of post in 1973 and on their being found eligible for such post.

5. We have heard the learned counsel for the parties and have perused the record. Admittedly, the applicants were not similarly placed with Mr. Khan when they were appointed in Government service. The applicants were employed by the respondents in 1957/1960 whereas Mr. Khan was an employee of the Municipal Corporation of Delhi, and as seen from the facts Mr. Khan was appointed as Assistant Teacher in the MCD in 1960 and was promoted as Senior Teacher (Drawing) in 1965. Consequent on taking over of the MCD Schools by the Delhi Administration in 1970, the seniority of the staff of MCD was maintained separately. The judgment given in the case of Shri Khan from the date when he was an employee of the MCD cannot give a cause of action for the applicants who were employees of the Delhi Administration from the

(14)

date of their initial appointment and are not affected because of Shri Khan's seniority as their seniority is kept distinct from the cadre of such of those staff employed in MCD Schools and taken over by the Delhi Administration including Shri Khan. The respondents have framed Recruitment Rules in 1973 for the post of PGT (Drawing) and on their eligibility for such appointment, the applicants have, in fact, been given the PGT scales from the date of creation of such posts in 1973. The applicants contention in the rejoinder is that although no posts were in existence in MCD as well in 1966, the High Court of Delhi had allowed the PGT scale on the plea that the post of PGT were not created subject-wise. This contention is untenable as far as applicants are concerned. The respondents have notified the Recruitment Rules for the 141 posts of Post Graduate Teachers for Drawing and Gem. and Mech. Drawing by their Notification dated 27.2.1973. The applicant in O.A. No. 2176 of 1994 contends in the rejoinder affidavit that an understanding was given to the drawing teachers in the Delhi Administration that whatever was finally decided in the case of Shri Khan would be accepted and the benefit of the judgment would be extended to all the persons working as Drawing Teachers. There is nothing on record to show that there was any understanding in this regard and, therefore, the contentions of the applicants that the respondents are bound by the principle of promissory estoppel to give benefit of the PGT scale to the applicants from 1.6.1966 as was given to Shri Khan, in stead from December, 1973, is not tenable.

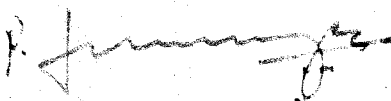
6. In the result, the applications are devoid

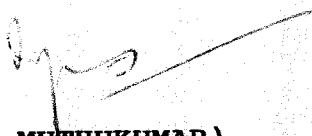
h

19

of merit and are dismissed. No order as to costs.

Let a copy of this order be placed in both  
the case files.

  
(P. SURYAPRAKASAM)  
MEMBER (J)

  
(K. MUTHUKUMAR)  
MEMBER (A)

RKS