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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 387/2000

New Delhi, this the 13th day of September, 2000

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Jai Kishan Gupta
S/o Late Sh. Raghunath Sahai Gupta
aged about 57 years,
r/o 20, Madan Park,
East Punjabi Bagh,
New Delhi-110026,
working as a Drawing Teacher
in Govt. Boys Senior Secondary School No.1,
Madipur, Delhi-110063. Applicant
(Applicant in person)

VS.

1. Govt. of India through Principal Secretary,
Ministry of Home Affairs, *North Block, New Delhi*
2. Govt. of N.C.T. of Delhi through Principal
Secretary (Finance), 5, Sham Nath Marg,
Delhi.
3. Director of Education,
Govt. of N.C.T. of Delhi,
Old Sectt., Delhi-54.
4. Dy. Director of Education District-West-A,
New Moti Nagar, New Delhi-110015.
5. Principal, Govt. Boys Senior Secondary School
No.1, Madipur, Delhi-110063.
(By Advocate: Mrs. Sumeda Sharma)

ORDER (ORAL)

By Mr. Govindan S. Tampi,

Sh. Jai Kishan Gupta has come up in this application seeking refixation of the pay following promotion to the senior grade. The applicant has been working as a confirmed Drawing Teacher and drawing the basic pay of Rs.2600/- w.e.f. 1.7.89 in the scale of Rs.1400-2600. While drawing pay at the maximum of the scale, i.e. at Rs.2600/- on 27.7.90, he was granted senior scale of Rs.1640-2900, on completion of 12 years and his pay was fixed again at Rs.2600/- with directions that he would earn increment on completion of one year. His

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plea is that he has already worked for more than a year at the maximum and by the pay fixation order after the elevation to the higher grade, his pay was fixed at the maximum of the earlier scaler, i.e. at Rs.2600/-, with the result he was being made to stagnate on the same pay for more than 2 years. The case, he says is squarely covered by Office Memorandum No. 7(61)-E.III(A)/77 dated 24.11.77/5.12.77 and he is entitled for fixation at one stage above, i.e., at Rs.2675/- on promotion.

2. Contesting the plea raised by the applicant, Ms. Sumedha Sharma, learned counsel for the respondents point out that O.M. dated 5.11.77 was not applicable in the case of the applicant and his pay fixation would have to be regularised in terms of audit instruction (1) appearing below FR 22, which says that the initial pay in the new time scale may be fixed at the salary or the pay last drawn. Therefore, according to the counsel, the applicants pay on promotion has been correctly fixed at Rs.2600/- and the same would not warrant any revision.

3. We have carefully considered the matter. It is not disputed that the applicant was drawing w.e.f. 1.7.89, the basic pay of Rs.2600/- which was the maximum in the grade of Rs.1400/2600. His promotion to the grade of Rs.1640-2900 came on 27.7.90, when he had already done more than one year on the basic pay of Rs.2600/-. Still, it was fixed at Rs.2600/- being the last pay drawn, keeping in mind the audit instruction No.1, which reads as below:

"If a Government servant has held substantively, or officiated in a post in the cadre or class prior to the introduction of a new time-scale, and has drawn during the period, salary or pay equal to a stage, or intermediate between two stages, in the new time-scale, then the initial pay in the new time-scale may be fixed at the salary or pay last drawn and the period during which it was drawn may be counted for increment in the same stage, or if the salary or pay was intermediate between two stages, in the lower stage of that time-scale." (emphasis supplied).

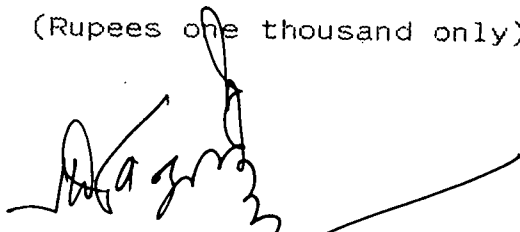
This meant that even after continuing for one year at the maximum of the earlier grade, the applicant was directed to receive the same pay, despite his promotion, thereby postponing the availment of the benefit of promotion. This was not correct. In fact the very same audit instructions state that the period during which the pay was drawn may be counted for increment in the same stage. It would therefore mean that the applicant was entitled to be fixed at one stage higher, in the new scale, as he had got promotion after doing more than a year, at the maximum of the lower scale, i.e., in this case at Rs.2600/-. His pay as such should have been fixed at Rs.2675/- on 27.7.90, with the next increment being one year after. This exactly is the basis for the OM No. 7 (61)-E-III (A)/77 Dated 24.11.77/5.12.77. The relevant portion of the OM reads as below:-

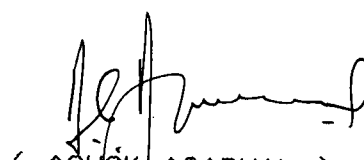
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"In other words, if there is a stage corresponding to the maximum of the Ordinary Grade in the Selection Grade, an officer who is promoted to the Selection Grade, after he has served in the maximum of the Ordinary Grade for a year or more would be entitled to his pay in the Selection Grade being fixed at the next higher stage."

This direction squarely covers the case of the applicant and is also not at cross purposes with the audit instructions, read completely. The applicant was, therefore, correctly entitled to have his pay fixed at Rs.2675/- on promotion and fixing his pay only at Rs.2600/- on promotion was wrong.

4. The application therefore succeeds and is accordingly allowed. The respondents are directed to refix the basic pay of the applicant at Rs.2675/- as on 27.7.90 with all the consequential benefits. An amount of Rs.1000/- (Rupees one thousand only) is also awarded to him as costs.


(GOVINDAN S. TAMPI)
Member (A)


(ASHOK AGARWAL)
Chairman

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