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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.697/2000

New Delhi this the 31st day of August, 2001.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

G.R. Nigam,
S/o late Sh. A.R. Nigam,
R/o A-149, Ashok Vihar, Ph.-I,
Delhi-110052.

-Applicant

(By Advocate Shri D.R. Gupta)

-Versus-

1. Govt. of N.C.T. of Delhi through
its Chief Secretary,
5, Sham Nath Marg, Delhi.
2. Directorate of Education,
Govt. of N.C.T. of Delhi,
Old Sectt.,
Delhi.
3. Deputy Director of Education,
Distt. North West (A),
Hakikat Nagar,
Delhi (Accounts Branch),
New Delhi.

-Respondents

(By Advocate Shri George Paracken)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant, a retired Government servant has assailed an order dated 15.11.2000, whereby the selection senior scale of PGT, which had been accorded to the applicant, has been withdrawn. The applicant has sought grant of benefit of pay in the senior scale of Rs.2200-4000 to be effective from 1.3.86 with all consequential benefits, including 18% interest and also to re-calculate the retiral benefits.

2. Briefly stated the applicant was given PGT selection grade w.e.f. 1.3.74 and on completion of 12 years service in the grade w.e.f. 1.3.86 was accorded the selection senior scale on the basis of respondents order

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dated 29.10.88. The applicant had remained on deputation on a foreign assignment from 25.11.81 to 24.11.84. The applicant was accorded notional increments during the aforesaid period and was also promoted on ad hoc basis as Vice Principal in the pay scale of Rs.2000-3500 w.e.f. 10.3.93 while on foreign assignment. The orders passed by the respondents on 20.10.98 regarding grant of senior scale were issued after his retirement. The respondents accorded the senior scale to the applicant by pay fixation order dated 23.12.99, making it effective from 1.3.89 instead of 1.3.86 and later on by a corrigendum dated 17.2.2000 the applicant's pay was reduced from Rs.3600/- to Rs.3500/-. By an order dated 15.11.2000 the case of the applicant was considered in pursuance of the orders of the Tribunal dated 26.7.2000 in OA-206/2000 as well as in the light of respondents' OM dated 5.5.2000. The applicant has not been found fit for accord of selection scale, as he could not complete 12 years as PGT and as he was awarded selection grade of PGT from 1.3.75 and promoted as Vice Principal on 2.3.83 and also got the benefit of stepping up of pay as Vice Principal he was deemed to be regularly promoted and as such he cannot be accorded the benefit of pay scale. The earlier orders dated 23.12.99 and 17.2.2000 have been withdrawn.

3. The learned counsel of the applicant stated that the claim of the applicant has been been illegally denied to him as similarly situated persons have been accorded the same, including Sh. R.K. Aggarwal, Sh. S.K. Agnihotri and Sh. Umesh Chandra who were also on foreign deputation and this period was reckoned for the purpose of counting 12 years. Denial of the same to the applicant



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would amount to hostile discrimination which is contrary to Articles 14 and 16 of the Constitution of India. It is also stated that the OM dated 5.5.2000 which has been complied to deny the applicant his rightful claim is only an administrative order which cannot have a retrospective effect. It is also states that unless the applicant is confirmed as a Vice-Principal his lien is maintained as PGT and he is deemed to have completed a qualifying service of about 12 years. It is also stated that once the service is counted during the foreign assignment, as for notional increments the same would also be considered for the purpose of grant of senior scale. In his rejoinder the applicant contended that the respondents in their meeting held on 6.6.97 in the Chamber of Principal Secretary which has been taken note of by this Tribunal in OA-1295/2000 in Jodha Ram v. Union of India, it has been decided that those PGTs who were promoted as Vice-Principal before their completing 12 years in the old Selection Grade even promoted on regular basis but not confirmed on that post and were officiating as Vice-Principal were entitled to the Selection Scale of their substantive post of P.G.T. The applicant contended that the decision of this Tribunal in Gajraj Singh on which OM dated 5.5.2000 has been issued would not be used against him, as the administrative order can be effective only prospectively. In Jodha Ram it is contended that therein it has been held that as the applicant was promoted as Vice-Principal on ad hoc basis his lien on the post of PGT still exists. The decision of the respondents to deny him the senior scale would not be reasonable and for this a speaking order is to be passed by



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the respondents. In compliance, orders have been passed on 5.5.2000 wherein it has been stated that the period of 12 years is necessary for selection scale of PGT.

4. On the other hand, the learned counsel of the respondents strongly rebutting the contentions of the applicant stated that after the retirement of the applicant his case for senior scale has been considered along with others by letter dated 29.10.98 and the same was subject to the condition that one should complete 12 years of service in the selection grade of Rs.2000-3500 and was working as Vice-Principal on the date of grant of selection scale. The period of service of 12 years was to be counted on the lines as service is counted for the purpose of grant of increment. The service rendered on foreign assignments shall not qualify for the eligibility criteria. The applicant proceeded on foreign service for three years w.e.f. 25.10.81 to deputation and as such was not eligible. The applicant was accorded the senior scale of PGT w.e.f. 1.3.74 and was entitled for selection grade w.e.f. 1.3.86. The Accounts Officer fixed the pay of the applicant w.e.f. 1.3.89 and taking into consideration the deputation period of three years. In view of directions contained in OA-2386/99 dated 8.2.2000 in Gajraj Singh the grant of selection grade has been considered de novo and it has been clarified as to whether ex PGTs who have already been promoted to the post of Vice Principal on regular basis before completion of 12 years in senior scale of PGTs who have already been promoted to the post of Vice-Principal on regular basis before completion of 12 years in senior scale of PGTs are qualified or not. It has been clarified that 12 years is a necessary condition and



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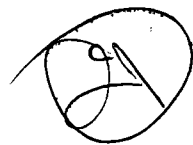
as such OM dated 5.5.2000 has been issued. As the applicant had not completed the requisite service and also placing reliance on the decision of this Court in OA-206/2000 in Inderjeet and Others the claim of applicant was not found covered for grant of selection scale. The applicant has been accorded senior scale of PGT w.e.f. 3.7.75 and granted selection scale of PGT w.e.f. 1.3.86 and as on that date he has not completed 12 years. Moreover, the applicant was promoted as Vice Principal on 10.3.83 on regular basis as he got the benefit of stepping up of pay, which is accorded to a regular promotee on 29.1.86 he is not found eligible and not fulfilling the condition of 12 years service in selection grade for grant of selection scale of PGT. The same was communicated on 15.11.2000. The order regarding pay fixation has been withdrawn later on. The applicant cannot allege discrimination. Some of the incumbents have been accorded the benefit of selection grade before the order dated 5.5.2000 but as he was promoted as Vice-Principal on 6.7.95 he has not completed 12 years of service and as such being situated unequally he cannot be meted out an equal treatment. It is also stated that the applicant has not been accorded the financial benefits pertaining to selection grade as yet.

5. We have carefully considered the rival contentions and perused the material on record. In our considered view the applicant is not legally entitled for grant of selection grade of PGT. The action of the respondents to withdraw the benefit accorded by letter dated 23.12.99 and 17.2.2000 is absolutely ^{he} legal. The contention of the applicant that a subsequent

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administrative order would not be applied retrospectively would be of no avail to him as the aforesaid OM has been issued in compliance of the directions of the Court in Gajraj Singh's case (supra), wherein the respondents have been asked to pass a speaking order. The office memorandum has been issued in the wake of decision of Gajraj Singh whereby keeping in view the clarification accorded by the Government on 3.11.87 and also keeping in view the decision of Inderjeet and Others v. Union of India in oA-206/2000 wherein the Tribunal in similar circumstances have taken note of OM dated 5.5.2000 issued directions to consider the claim as per terms of order dated 29.10.98 as well as clarification dated 5.2.2000. The respondents by applying the aforesaid criteria as laid down in OM dated 5.5.2000 decided in the case of the applicant that he is not entitled for accord of the pay scale as he failed to fulfil the eligibility criteria of 12 years of service in the senior scale. As the applicant was awarded the PGT selection grade w.e.f. 1.3.75 and having promoted on ad hoc basis on 2.3.83 and further regularised as Vice-Principal on 29.1.86 has failed to complete requisite 12 years of service in the senior scale and should have been working as Vice-Principal and service rendered on foreign assignment shall not be taken into reckoning for the purpose of counting the period of 12 years. By the aforesaid memorandum dated 5.5.2000 this has been clarified that senior scale will be granted after 12 years to PGT in senior scale of respective cadre and as the applicant has not been found to have completed 12 years of service and was promoted on regular basis as Vice Principal before 12 years he would not be eligible for consideration. The contention of the applicant that once the period has been



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reckoned on deputation as for increments the same should be treated for according the eligibility criteria cannot be acceded to as under the relevant rules the applicant was not having lien as soon as he was promoted as Vice-Principal and his pay was stepped up. The provisions would have application only when there has been a joining of a new post with the Government and till confirmation the lien is maintained after coming into operation of 1989 instructions the confirmation has been restricted to entry grade and as such the resort of the applicant to contend that before confirmation he would retain his lien as PGT and this period would be treated as eligibility criteria is not legally tenable. Apart from it, as per the decision the foreign deputation cannot be treated as qualifying service for the criteria of accord of senior scale. The period of deputation has been rightly deducted for the purpose of fixation of pay by the respondents. As the applicant has failed to have the necessary eligibility condition of completion of 12 years in the PGT scale he cannot be accorded the benefit and has been rightly withdrawn by the respondents. We do not find any fault with the action of the respondents.

6. Having regard to the discussion made and the reasons recorded the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

'San.'

M.P. Singh

(M.P. Singh)
Member (A)