

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.161/89

New Delhi this the 8th Day of April, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Vice-Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Mrs. Raj Bala Dalal,
W/o Sh. Raghuvinder Singh,
R/o Vill. & Post Office Mitraon,
Dhasa Road, Near Najafgarh,
New Delhi-110043.

Applicant

(By advocate Sh. G.D. Gupta)

versus

1. Delhi Administration
through its Chief Secretary,
5, Sham Nath Marg,
Delhi-110054.
2. The Director of Education,
Delhi Administration,
Old Secretariat,
Delhi.

Respondents

(By advocate Mrs. Avnish Ahlawat)

ORDER
delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

This O.A. has been filed by Mrs. Raj Bala Dalal, a P.G.T. (Physical Education) challenging the orders dated 1.2.1984 and 21.1.1988 whereby she has been promoted as P.G.T. retrospectively from 3.12.81, but it has been stated that she will not be entitled to any other benefit/claim except seniority in the grade of P.G.T. (Physical Education) Female.

We have heard the learned counsel for the parties and perused the records. The admitted facts of the case are that the applicant was initially appointed as Senior Physical Education Teacher in December, 1979 by selection in an open competition. She was later on promoted as Post Graduate Teacher

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(Physical Education) through a D.P.C. vide order dated 3.2.1983. The seniority to the post of Senior Physical Education Teacher was required to be determined on the basis of the principles laid down in the Delhi Administration ^{Rules} Rules, 1965. No seniority list was published. The seniority list was determined on the basis of the date of appointment for promotees senior P.E.Ts. and date of joining for directly recruited senior P.E.Ts. In the promotion list dt. 3.12.81, the applicant found that though she was not considered, her juniors had been included in it. She represented and ultimately she was ordered to be promoted as P.G.T. prospectively vide order dated 3.2.1983. Her further representations made ~~to~~ the authorities to reconsider her case and finally vide order dated 1.2.1984 she was ordered to be promoted retrospectively w.e.f. 3.12.1981. The short question is to decide whether such retrospective promotion would entitle her to notional fixation of pay as well as her earning increments w.e.f. 3.12.1981.

The learned counsel for the respondents raised a preliminary objection regarding limitation. The order under challenge was passed on 1.2.1984 while the application was filed in 1989. However, it was only in 1988 ^{that & w} when her representation was rejected vide order dated 21.1.1988 (Annexure-N). We, therefore, hold that the application is not barred by limitation.

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The other argument advanced by the learned counsel for the respondents was that even though the offer of appointment of Trained Graduate Teacher was made in December, 1979, the applicant joined her duties only on 1.9.1980. She was not medically fit as she was expecting a child. In the appointment order, it was clearly mentioned that the offer of appointment was subject to the applicant being declared medically fit by the Staff Selection Surgeon, Police Hospital, Delhi. Hence, her length of service was calculated from 1.9.1980 i.e. the date of her actual joining. The learned counsel drew our attention to the case of State of Andhra Pradesh & Ors. etc. etc. versus G. Sreenivasa Rao & Ors. etc. etc. (Judgements Today 1989(1) S.C. 615) wherein it was held that "equal pay for equal work" does not mean that all the members of a cadre must receive the same pay-pocket irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service".

On the other hand, the learned counsel for the applicant relies on the judgement of the Supreme Court in the case of P. S. Mahal and Others versus Union of India and Others (1984(4) SCC 545 wherein it was held that those who would have been rightly selected for promotion, must be given promotion with retrospective effect from due dates and if necessary, supernumerary posts, in the appropriate grades should be created and all arrears of salary and allowances should be paid to them on the basis of such retrospective promotions.

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It is clear that the applicant was a direct recruit and in the seniority list all Senior Physical Education Teacher (Female), her position has been shown on the basis of the merit list and she has been shown as having joined on 7.1.1980. There is no evidence that this seniority list was ever changed. The fact that the respondents themselves wish to give her promotion from retrospective date shows that they found her claim as genuine. The only question for adjudication is whether she would be entitled to the pay of Senior P.G.T. even for the period when she was not actually working on that post. It is an accepted fact that the applicant can't be given pay for a higher post if she has not actually worked against it. However, she is entitled for notional pay fixation from the date she has been promoted i.e. 3.12.1981 and is also entitled to her increments on that basis. The application is, therefore, disposed of with the following directions to the respondents:-

(i) The notional pay of the applicant

shall be fixed in the grade of

P.G.T. w.e.f. 3.12.1981. She would

also be entitled to the increments

that she would have earned from

that date.

(ii) No arrears of pay would be given to her for this period though the benefit increased pay due to of the increments would be available to her from 3.2.1983.

(iii) There will be no order as to costs.

B.N. Dihoundiyal
(B.N. DIHOUNDIYAL)

MEMBER (A)

/v

v/

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN (J)