

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1873/89

With

O.A.No.1875/89

New Delhi this the 2nd November 1995.

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Hon'ble Shri M.V. Krishnan, Acting Chairman
Hon'ble Dr A. Vedavalli, Member (J)

O.A.No.1873/89

Shri Gurdev Singh,
Laboratory Assistant,
Government Higher Secondary School,
Malvia Nagar,
New Delhi. ...Applicant

(By Advocate : Shri K.L. Bhandula)

VERSUS

DELHI ADMINISTRATION, THROUGH

1. Chief Secretary,
5 Sham Nath Marg,
Delhi-110054.
2. Director,
Directorate of Technical Education,
Rouse Avenue,
New Delhi.
3. Director of Education,
Directorate of Education,
Old Secretariat, Delhi.....Respondents

(By Advocate : Shri Raj Singh for Respondent
No.1 & 2.
Mrs Meera Chibbar for Respon-
dent No.3

O.A.No.1875/89

Shri P.C. Bhatia,
Laboratory Assistant,
Govt. Girls Senior Secondary School,
Sector V, New Delhi. ... Applicant

(By Advocate : Shri Virender Mehta)

VERSUS

1. DELHI ADMINISTRATION, THROUGH
Chief Secretary,
5- Sham Nath Marg,
Delhi-110054.

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2. Director,
Directorate of Technical Education,
Rouse Avenue,
New Delhi.
3. Director of Education,
Directorate of Education,
Old Secretariat,
Delhi-7
- ...Respondents

(By Advocate : Shri Raj Singh, for Respondent
No.1 & 2.
: Mrs Meera Chibbar for Respondent
No.3

ORDER

(By Hon'ble Dr A. Vedavalli, Member (J))

As the above two Original Applications involve almost identical facts, issues and reliefs, they are being disposed of by this common order.

2. The brief factual background is as under :

Shri Gurdev Singh, Applicant in O.A.No.1873/89 was employed in the Directorate of Technical Education, Delhi (Respondent No.2) as skilled workman (Blacksmith) in 1966, Shri P.C. Bhatia, Applicant in O.A. 1875/89 was also employed in the same directorate as skilled workman/Assistant Instructor (carpenter) in 1965. Both the applicants were in the grade of Rs.130-212 and were working in Junior Technical School in Delhi. They were declared quasi permanent after working for three years under Rules 3 & 4 of Central Civil Service (Temporary Service) Rules, 1965. While so, certain schools under the Delhi Administration (respondent No.1) were closed due to poor results during the

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academic year 1974-75 and several skilled workman including the applicants were declared surplus and their services were terminated after giving three months' notice. However, as per a decision taken, such skilled workman were being absorbed in equivalent posts in a phased manner. The applicants were given fresh appointments as laboratory assistants in the grade of Rs.290-500 where as some other persons stated to be junior to them were absorbed against the posts of skilled workman/Workshop Assistants in the pay scale of Rs.440-750 as fresh appointees. However, no benefit of past service was given to any of those employees. A number of employees aggrieved by the deprivation of seniority and wages from the date of termination to the date of fresh appointment filed cases before several judicial fora and a few of those cases were transferred to this Tribunal under Section 29 of the Administrative Tribunals Act 1985 and were numbered as Transfer cases namely ;

Regd.No.T-71/86
(S.No.470/82)
Shri B.D. Sharma

T.541/86 (S.No.473/81)
Raghuni Metha

T-533/86 (S.No.468/82)
Shri Ved Prakash

T-542/86 (S.No.471/83)
Harbans Rai

T-112/86 (S.No.400/79)
Manohar Lal Jaggi

T-114/86 (S.No.398/79)
Ranjit Singh

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T-113/86 (S.No.399/79)
Mohinder Singh

T-274/86 (S.No.401/79)
Hari Kishan Aroa

T-527/86 (S.No.469/80)
Bhim Singh Yadav

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3. The aforementioned cases were heard and disposed by a judgement dated 31.5.88, (Annexure-F to O.A.1873/89). It was held by this Tribunal in the aforesaid judgment, inter alia, thus ;

"In the facts and circumstances, we decree the suits declaring the order of termination of the plaintiffs' service in 1976 as illegal and directing that the break in service between August, 1976 and 1978 should be condoned with all consequential benefits of seniority, pension, back wages etc in full. There will be no order as to costs."

4. The two applicants before us were not parties in the aforesaid nine transferred cases. It appears that they made certain representations to the administrative authorities in 1987 and 1988 i.e. more than 10 years after termination of their services, but before the delivery of the aforesaid judgment of this Tribunal dt 31.5.88 was given. Further representations were made by Shri Gurdev Singh i.e applicant in O.A. No.1873/89 after the delivery of the said judgment, (vide Annexures I and J) in 1988 and 1989 respectively claiming benefits similar to those granted to the applicants in the aforesaid judgment. Similar representations were



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submitted by Shri P.C. Bhatia applicant in O.A.No.1875/89 (Annexure A Colly). The applicants have stated that their representations have been rejected by the respondents by verbal orders informing them that their cases cannot be considered on par with the applicants in the aforesaid transferred cases irrespective of the fact that they were similarly situated. The applicants filed the present O.A. against the said orders in September, 1989.

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5. The present O.As were, heard by the Tribunal earlier along with two other similar O.As (O.A.No. 1870/89 filed by Shri H.K. Anand and O.A.No.1879/89 filed by Shri Bhim Singh Chauhan) stating that all the 4 applications involved identical facts, issues and reliefs, they were disposed of by a common order on 30.4.92 (Annexure III) at page 108 of the paper-book). It was observed by the Tribunal inter alia thus;

"It cannot at the same time be denied that the applicants have kept quiet about their status and scale of pay and the conditions of re-employment for a very long time. They have not diligently pursued the remedies available to them unlike the applications in the Transferred Applications. In the grant of relief, therefore, the present applicants cannot be treated wholly on par with the applicants in the transferred Applications."

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6. The four applicants therein prayed for grant of scale of pay of Rs.440-750 with effect from the date of the termination of their services in 1976 or at least with effect from January 1978, when the applicants in the transferred cases were given the benefit of the pay scale of Rs.440-750. They have also prayed for arrears to be paid to them from either of these dates. They have further prayed for continuity of service as well as seniority.

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7. It was held by the Tribunal, inter alia, thus:

"Considering all the facts and circumstances of the case, these four applications are allowed to the following extent and the following orders are passed:-

- (i) The services of the applicants shall be deemed to be continuous from the date of their original appointment as Skilled Workman (Painter), ignoring the termination of their services in 1976 on the ground of being surplus.
- (ii) The applicants shall be given notional pay fixation in the grade of Rs.440-750 with effect from such date as is specified in the foregoing paragraph.
- (iii) On such notional fixation of pay, from time to time, however, the applicants shall be entitled for payment of arrears of emoluments only with effect from the dates of the filing of the respective application in this Tribunal, and they are not entitled for any arrears for the period prior to these dates.
- (iv) Such arrears, if any, shall be paid to the applicants within a period of two months from the date of receipt of a copy of this order by the respondents.

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(v) The applicant shall be granted due seniority on the basis of the above directions.

(vi) There will be no order as to costs."

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8. Thereafter, the Directorate of Education, Delhi Administration filed two Review Applications i.e. R.A.No.118/93 (Gurdev Singh Vs Delhi Administration) and R.A. No.119/93 (P.C. Bhatia Vs Delhi Administration) seeking review of the aforesaid judgement dated 30.4.92 so far as it applies to O.A.1873/89 (Gurdev Singh's case) and O.A.1875/89 (Shri P.C. Bhatia's case) who are made respondents in the said R.As.

9. It was stated in the R.A., inter alia, that the applicants in the two O.As i.e., Shri Gurdev Singh and Shri P.C. Bhatia were working in the Directorate of Education, Delhi when they filed those O.As and were still continuing in the said Directorate. The 'reliefs' sought could have been implemented only by them. Moreover, the applicants Shri Gurdev Singh and Shri P.C. Bhatia were erroneously assumed to be similarly situated in the judgement dated 30.4.92. They did not furnish full information. Hence, the applicants ought to have impleaded the Review Applicants as a necessary parties which was not done. The R.As were resisted by the two applicants who were made respondents therein.

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10. After hearing the learned counsel for the parties the R.A. was disposed of on 15.11.93. While allowing the two R.A.s on the ground that the said judgement under review suffers from errors apparent on the face of record, it was held as follows:-

"Therefore, while allowing these Review Applications, we modify the judgement dated 30.4.92 by directing that it shall not be deemed to have disposed of O.A. 1873/89 filed by Gurdev Singh, respondent in R.A.118/93 and O.A.1875/89 filed by P.C. Bhatia, Respondent in R.A.119/93. That judgement, in so far as it concerns these two O.As, is recalled and OA1873/89 and OA-1875/89 are restored back to file for rehearing. A copy of this direction shall be placed by the Registry in the remaining two O.As viz O.A.1870/89 and O.A.1879/89. Further, a copy of this order shall also be served on the parties to those two O.As."

11. Thereafter, when the matter came up for further directions, the applicants were directed to file amended OA impleading all necessary parties. Accordingly, the applicants Shri Gurdev Singh and P.C Bhatia filed amended O.As. in April, 1994 and January, 1994 respectively impleading the Director of Education, Delhi as the third respondent.

12. After the pleadings were complete, the O.As came up for hearing before this Bench.

13. Relief sought by the applicants in the amended O.A.s are that (i) the respondents be directed to place the applicants in the post of

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skilled workman/Craft Instructor in the prescribed pay scale of Rs.440-750 (pre-revised) from the date of the fresh appointment order issued in December, 1978 when Shri H.K. Anand similarly situated and other skilled Assistants junior to the applicants were granted the said pay scale which was upheld by the Tribunal in their judgement dated 31.5.88 in the Transferred cases; (ii) Accord the applicants the proper place of seniority accordingly and future promotion as per rules; (iii) Respondents be also directed to pay the arrears of difference accruing from the rightful placement of applicants in the prescribed scale of pay of Rs.440-750 w.e.f. 3.11.76 or in the alternative from January, 1978.

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14. Replies to the amended O.A. have been filed by the Respondent No.3 i.e. Directorate of Education, Delhi, opposing the amended O.A.s on several grounds. They have also raised a plea that the O.A. is barred by limitation and cannot be entertained now. Rejoinders have been filed by both the applicants denying the averments contained in the replies filed by the respondents and generally reiterating the various grounds raised in the amended O.A.s.

15. We have heard the learned counsel for the parties at length and have perused the material papers placed on record.

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16. Re the claim of the applicant Shri Gurdev Singh in amended O.A. No.1873/89 for the pre-revised scale of Rs.440-750, Respondent No.3 submitted that the said scale is given to TGT for which the requisite qualification is B.A. B.Ed whereas the applicant is only a graduate and hence cannot in any event be given that scale. Even otherwise he has no right to claim this scale since he was engaged as a Laboratory Assistant in the pre-revised scale of Rs.290-500 only after his services were terminated by the Directorate of Technical Education (Respondent No.2) on 18.8.76. When he was absorbed in the Directorate of education on 9.12.76 he was taken in the same pay scale and his pay also was fixed at Rs.440/- which he was drawing at the time of his termination. He cannot claim the higher scale of Rs.440-750 (Pre-revised) on a par with Shri H.K. Anand. The same scale of Rs.290-500 was given to Shri H.K. Anand also at the time of his absorption in the Directorate of Education but he was subsequently selected and given fresh appointment in higher scale by the Directorate of Technical Education after selecting him through Staff Selection Board.

17. Re the claim of seniority, it was averred by Respondent No.3 that it comes to an end the moment his services were terminated as he was absorbed in a different Directorate and there is no common seniority of the two Directorates. The relief claimed is misconceived also because he

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has not challenged his termination and unless the termination is set-aside, the question of claiming seniority does not arise at all. In any case, a surplus person absorbed elsewhere has to join as a junior to juniormost in that institution and cannot disturb the seniority of other persons who have regular seniority. Further, he has not challenged the fresh appointment also and his past services cannot be counted for seniority in a different directorate.

18. It was further submitted by Respondent No.3 that in terms of Para.4 of the government of India, Ministry of Finance, Department of Expenditure, O.M. No.F-11(3)/EV(A)/76 dated 28.2.76, the intervening period between the date of termination from the Directorate of Technical Education and the date of absorption under the Directorate of Education will not be reckoned as qualifying service for pension though the pre-interruption service shall be treated as qualifying service for pension. This has already been mentioned in the appointment letter itself (Annexure R-2) colly. Moreover, the applicants were not parties in the transferred cases decided by the Tribunal in 1988.

19. Respondent No.1 & 2 in their reply to the amended O.A.No.1873/89 of Shri Gurdev Singh have also raised an objection regarding maintainability of the O.A. on the ground of limitation. They have also submitted that the benefits

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granted by the Tribunal to certain officials need not ipso facto be applicable to the applicant's case. Moreover, the applicant is enjoying several benefits in the Directorate of Education like higher pay on superannuation, medical benefits etc which do not exist in the directorate of Training and Technical education. They have further said that if he is otherwise fit as per recruitment rules, he may be taken back in their directorate on the post of Workshop Instructor.

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20. In the case of the applicant Shri P.C. Bhatia (amended O.A.1875/89) also, Respondent No.3 have given similar reply and have stated, inter alia, that he is only an Intermediate and T.G.T. scale cannot be given since minimum qualification for that post is B.A. B.Ed. Respondent No.1 and 2 have given their reply to the aforesaid amended O.A. on similar grounds as in the case of the O.A. of Shri Gurdev Singh.

21. We have heard the arguments advanced by the learned counsel for the party at length and have gone through the pleadings and all the material papers placed on record. The matter has been considered carefully.

22. The issue to be considered in the first instance, in our view is whether the applicants Shri Gurdev Singh and Shri P.C. Bhatia have taken necessary steps for the redressal of their

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grievances before the competent judicial forum within the prescribed time under the law after the cause of action arose.

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23. It is seen that the services of the applicants along with those of several other employees working in the Directorate of Technical Education (Respondent No.2) were terminated declaring them as surplus due to closure of certain schools and after giving three month's notice. This was done as far back in 1976. However, the applicants were given fresh appointments to the post of Laboratory Assistants in the Directorate of Education, Delhi (Respondent No.3) on 8.12.76. Several other employees whose services were also similarly terminated were given fresh appointment to the post of skilled workmen/workshop Instructors. The applicants admittedly have not challenged either the orders of termination or the orders of fresh appointment as Laboratory assistants or both before any judicial forum, if they had any grievance in the said orders till they filed their O.A. before this Tribunal in 1989. Moreover, there is nothing to indicate that they accepted the appointment to the post of Laboratory Assistants under protest or with any reservation as to the availing of legal remedy available under the law. It appears that some representations to the Administrative authorities have been submitted by them in 1987 and in 1987 i.e. more than 10 years after the termination of

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their services. Further representation were given by the applicant Shri Gurdev Singh on 18.9.88 (Annexure 1 to his O.A.) and on 14.8.89 (Annexure J to his O.A.) and by the applicant Shri P.C. Bhatia in 1989 (Annexure A colly to his O.A.) claiming pay scale of Craft Instructor etc similar to those given to Shri H.K. Anand and other juniors only after delivery of the judgement of this Tribunal dated 31.5.88 in the transferred cases.

24. It is obvious from the above that the applicants have not bothered to take necessary steps to challenge the termination of their services and also the fresh appointment and get them set-aside either by the competent administrative authority or by the judicial fora when the cause of action arose in 1976. It is well settled that a judgment by itself will not give rise to a cause of action to a person and the applicants, therefore, are not justified in taking a plea that the cause of action arose in 1988 when the aforesaid judgement of the Tribunal was given in respect of some other applicants in the said transferred cases. Even in the present amended OAs, they have not challenged either their termination or fresh appointments and merely want relief on similar lines as given to the applicants in 1988 by this Tribunal in the transferred cases. The present applicants have not even given any reasons for delay in taking appropriate steps before the competent fora for

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redressal of their grievances. Moreover, it has been held in a catena of decisions by the Supreme Court that by inordinate delay and laches the aggrieved party loses the remedy as well as the right, if any, under the law. In view of the above, we find that both the O.As are hopelessly time barred and can be dismissed on this ground alone.


25. Be that as it may, we have considered the two cases on merits also. It is quite apparent that there is no post of Craft Instructor in the Directorate of Education (Respondent No.3) where the applicants have been working as Laboratory Assistants on fresh appointment after termination of their services as Skilled Workman in the Directorate of Technical Education (Respondent No.2). But, they have been given appropriate pay fixation in the skilled workman scale relating to their former post. Moreover, they are claiming the scale of Trained Graduate Teacher (TGT) in the Directorate of Education for which there are not qualified as at present. Their claim for higher scale etc as given to Shri H.K. Anand and other juniors is also not justified since it is stated by the Respondents that Shri H.K. Anand was duly selected for the post of Craft Instructor in the Directorate of Technical Education (Respondent No.2) by the Staff Selection Board. If the applicants really wanted to improve their status and prospects, they ought to have taken appropriate steps to

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apply for being considered as Craft Instructor in the Directorate of Technical Education, if they are eligible. They could have also acquired the requisite qualification for promotion to the post of T.G.T. in the Directorate of Education. There is nothing on record to indicate that the applicants have taken any such steps since their termination of services/fresh appointment in the year 1976. The claim of the applicants to be treated as equal to Shri H.K. Anand and others apparently is not tenable since Shri H.K. Anand and the present applicants are not similarly situated in any manner. In the aforesaid facts and circumstances, we are of the opinion that on merits also the applicants^{As} have failed to establish any right to the post of Crafts Instructor or entitlement to that scale of pay etc on any valid and tenable grounds.

26. In view of the above discussion, we find that both the O.As are devoid of any merit and are, therefore, dismissed. No costs.

A. Vedavalli
2/11/95
(Dr A. Vedavalli)
Member (J)


(N.V. Krishnan)
Acting Chairman