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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2443 OF 1989

New Delhi this ^{12th} the ~~2nd~~ th Day of December 1994.

Hon'ble Shri S.R.Adiga, Member(A)
Hon'ble Mrs. Lakshmi Swaminathan, Member(J)

Shri H.K.Katyal
Craft Instructor
Industrial Training Institute
Subzi Mandi
Delhi-110 007.
(through ^{Sh. S. C. Gupta in Advocate and} Sh. L. R. Goel, Advocate)

....Applicant

Versus

1. The Lt. Governor of Delhi
through Chief Secretary
Delhi Administration
Old Secretariat Buildings
Delhi.

2. The Director Technical Education
Delhi Administration
Dayal Singh Library Building
Rouse Avenue
New Delhi.

...Respondents

(Through Sh. Arun Bharadwaj, Advocate)

J U D G E M E N T

Hon'ble Shri S.R.Adiga, Member(A)

The applicant Shri H.K.Katyal was appointed on 17.9.1965 as a skilled assistant in the Junior Technical School, Okhla and was made quasi-permanent as a skilled workman in the same scale of Rs.130-212 on 8.12.1968. On DPC recommendations, he was promoted as technician in the higher pay scale of Rs. 200-500 by order dated 1.3.71 and was posted at the Production Centre of G.B.Pant Polytechnic, Okhla. He successfully completed his probationary period of one year and was regularised as Technician by order dated 13.6.62. By order dated 6.5.76,

he was reverted from the post of technician (Rs. 210-500) to that of Assistantⁱⁿ scale (Rs. 125-300). Since there was no post of skilled assistant in the G.B.Pant Polytechnic, Okhla where he was working, he was allowed to draw the salary in the lower scale of Rs. 125-300 against the post of technician. By further order dated 12.5.76, he was retrenched even from the post of skilled assistant, with 3 month's notice, on the ground that he was surplus against the post of skilled assistant in the Technical Higher Secondary School, Okhla. Subsequently he was taken back to the service in January 1976 but was treated as a fresh entrant without payment of wages for the intervening period between 12.5.76 and Jan 1978 and lost seniority.

2. The applicant challenges his reversion from the post of technician to the lower post of skilled assistant and also the order relieving him from the post of skilled assistant, through a civil suit, which was transferred to this Tribunal bearing TA No. 284/86, in which the judgement was delivered on 3.7.87 (A-A). By the time the judgement was delivered, the applicant had been selected and appointed as Craft Instructor in the revised scale of Rs. 440-750 in January 1978 which was noted to be more or less equivalent to that of technician (Rs. 470-750), but he was deemed to have been a fresh entrant, thus losing the benefits of previous service for the purpose of pay and seniority. In its judgement dated 3.7.87, the Tribunal held that the applicant's reversion to the lower post of skilled assistant and his retrenchment thereafter, when the higher post of technician continues to exist and his juniors in the cadre of skilled assistant were retained in service in higher cadres, was bad in law and he should be deemed as retained as technician from the date of his reversion till his appointment as Craft Instructor in Jan 1978, with all consequential benefits of arrears of pay and seniority, as if he had not been reverted.

3. The applicant was paid arrears of salary from the date of his reversion on 10.5.76, to the date of his appointment as Craft Instructor on 15.1.78 in the grade of technician and not as skilled assistant. These arrears of Rs. 20,266/- were paid to the applicant, but on his behalf, it was argued that in the fixation of pay as Craft Instructor as on 15.1.78, his pay was notionally reckoned in the lower scale of skilled assistant of Rs. 290-500 and not as technician, which, according to him, the import of the judgement dated 3.7.87.

4. The applicant accordingly filed a CCP No.101/88 alleging non-compliance of the Tribunal's judgement dated 3.7.87 which was disposed of on 30.9.89, in which, after discussing the operative portion of the Tribunal's judgement, it was noted that the respondents had complied with the letter of the judgement though it should be contended that the spirit of the judgement had been overlooked. The order dated 13.9.89 observed that it was clear that the applicant was given the technician's pay scale from the date of his reversion till his appointment as Craft Instructor in Jan. 1978, and the judgement did not refer to how his pay as craft instructor should be determined. Consequential benefits were also confined only to arrears of pay and seniority. The Tribunal thus therefore dismissed the CCP but observed that if the applicant was aggrieved in any manner in which his pay as Craft Instructor had been determined, he was at liberty to file a fresh OA and it is in the background of that order that this OA has been filed.

5. On behalf of the applicant, it has been argued that the applicant's reversion from the post of Technician was illegal when the post of technician had continued, his juniors had been retained and the applicant was deemed to have remained as technician from the date of his reversion till his appointment as Craft Instructor in Jan 1978 and the Tribunal have held that consequential benefits of arrears of pay and seniority be given to the applicant

on the basis that he had not been reverted and his pay has to be fixed in the post of craft instructor by protecting the pay he was entitled to in the post of technician.

6. We have heard Shri S.C. Gupta for the applicant. Shri Arun Bharadwaj for the respondents stated during the hearing that he was unable to assist us because the departmental representative who was to bring the records had not come to the court. We have perused the materials on record and considered the matter carefully.

7. When the Tribunal in its judgement dated 3.7.87 had held that the applicant must be deemed to have been retained as technician from the date of his reversion till his appointment as craft instructor in Jan. 1978, it is not understood how the Directorate of Technical Education in their letter dated 6.2.89 addressed to the Principal, ITI, Subzi Mandi, Delhi on the subject of re-fixation of the applicant's pay as craft instructor in terms of the CAT judgement dated 3.7.87 have directed that the applicant's pay should be fixed in the scale of Rs. 440-750 in the post of craft instructor on the basis that had he continued in the post of skilled assistant in the scale of Rs. 290-500, the applicant would have drawn his pay at the stage of Rs. 440/- as on 15.1.78. This letter went on to direct the respondents to fix the applicant's pay at Rs. 440, in the scale of Rs. 440-750 as on 15.1.78 under FR 22(c).

8. By Tribunal's judgement dated 3.7.87, the applicant was deemed to have been retained as Technician from the date of his reversion, till his appointment as Craft Instructor in Jan. 1978, he will be entitled to pay protection at the time of fixation of his pay as craft instructor.

9. Under the circumstances, this application is allowed to the extent that the respondents' letter dated 6.2.89 re-fixing the applicant's pay at the stage of Rs. 440/- in the scale of

Rs. 440-750 as on 15.1.78 under FR 22 (c) is quashed and set aside, and the respondents are directed to re-fix the applicant's pay as ^{an instructor} on 15.1.78, at the stage at which he was drawing ^{as} technician, by giving him pay protection. In case the stage in the scale of craft instructor is ^{less} ~~more~~ than what he was drawing as technician, the ^{difference} ~~same~~ will be treated as personal pay, which will be absorbed in future increments. The applicant's pay should be re-fixed and arrears flowing therefrom should be paid to him within 3 months from the date of receipt of copy of this judgement.

No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

ad.