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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 464 of 1989

This 28th day of February, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Chattar Singh,
S/o Shri Mohkam Singh,
Drawing Teacher, P.G.T.
Govt. Boys Sr. Sec. School,
B-Block, Yamuna Vihar,
Delhi - 110053

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Applicant

By Advocate: None present

VERSUS

1. Union of India, through
the Secretary,
Ministry of Human Resource Development,
Government of India,
New Delhi.

2. Delhi Administration,
through the Chief Secretary,
Delhi Administration,
Delhi.

3. The Principal,
Govt. Boys Sr. Sec. School,
B-Block, Yamuna Vihar,
Delhi-110053

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Respondents

By Advocate: None present.

ORDER (Oral)

(By Hon'ble Mr. J.P. Sharma, M(J)

The applicant was appointed as a Drawing Teacher on 12.8.60 on the then existing pay-scale of Rs.80-220. Vide 2nd Pay Commission's recommendations the scale of Rs.80-220 for the teachers working in Middle Schools was revised to Rs.130-300. Vide another recommendation in respect of Drawing Teachers the 2nd Pay Commission recommended revision of the grade and those teachers working in the grade of Rs.80-220 and teaching in Higher Secondary



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classes (class 6 to 10) got the revised pay-scale of Rs.160-300. The grade IV of Drawing Teachers in the grade of Rs.100-250 teaching classes 6th to 10th standard was revised to Rs.160-300 and grade V of Rs.150-300 was revised to Rs.170-380. The grievance of the applicant is that on his initial appointment as Junior Drawing Teacher he was fixed in the pay-scale of Rs.80-220 and was posted in Govt. Higher Secondary School, Gandhi Nagar, where he used to teach higher classes. By the letter dated 5.4.61 the applicant was fixed in the scale of Rs.160-300 (Annex. 'D'). The applicant continued to enjoy that pay-scale upto 31.1.63. The Director of Education, however, issued O.M. dated 16.2.63 regarding fixation of pay of Drawing Teachers under CCS(RP) Rules 1960. By this letter to the Principal, Govt. Higher Secondary School No.2, West Patel Nagar, New Delhi, it was directed that the pay-scale of the applicant be fixed in the grade of Rs.130-300 w.e.f. 1.7.59th or the date of appointment whichever is later and the excess payment made to him till that date may be refunded to the Department. This order, according to the applicant, has been passed in violation of CCS(RP) Rules 1960 as well as Recruitment Rules of 1960. The applicant/made representation after the decision in the similar case of one Kesho Ram by Delhi High Court vide its order of March 1982 and fixation of the salary of Kesho Ram on the basis of directions given in the judgment as per order of Directorate of Education, dated 17.2.86, and thereafter according the benefit of the same judgment to another Drawing Teacher, K.L. Chopra by the order dated 16.2.87 (annexure 'H'). Representation of the applicant was rejected on 28.10.88 and thereafter the applicant filed the present OA under Section

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19 of the AT Act, 1985 in which he has prayed that, "direction be issued to the respondents to give the benefit of the pay-scale of Rs.160-300 as per recommendation of the 2nd Pay Commission as was granted to him vide order dated 5.4.61, and that the order of withdrawing this benefit by the order dated 16.2.63 be declared null and void."

2. The respondents have contested this application in their reply and opposed grant of the reliefs. Further it is admitted that the grade of Rs.80-220 was revised to the grade Rs.130-300 in general and Rs. 80-220 was revised to Rs.160-300 subject to the condition that the teacher must be teaching in Higher Sec. Schools and must be qualified for the later scale i.e. Rs.100-250 or Rs.160-300. As per the Recruitment Rules, even prevailing at that time the applicant was not qualified.

3. The applicant filed rejoinder and has denied the fact that he was not qualified to be appointed as Junior Drawing Teacher in the grade of Rs.80-220 at the relevant time as per the recruitment rules.

4. None is present on behalf of the parties and since this is an old matter we perused the records and proposed to dispose of this application on merits. In fact, the case is already covered with the decision in case of similarly situated employee, Kesho Ram who filed a writ petition before the Delhi High Court, Civil Writ Petition No. 1037/70 which was dismissed by the Single Judge on 9.5.1972 and the petitioner preferred an appeal No.190/72 which was decided by the order dated 19.3.82 (annexure 'G'). The petitioner, Kesho Ram was only Matric and had obtained diploma in teaching of Art from the Institute of Arts Education of

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Jamia Millia Islamia, New Delhi. The petitioner, Kesho Ram, was given the grade of Rs.68-170 as the diploma he held was regarded as a lesser qualification being one given after a course of one year or less. After discussing the case at greater length, Kesho Ram was allowed the grade of Rs.80-220 w.e.f. October 28, 1953 i.e. the date of his entry into service as Jr. Drawing Teacher. He was also granted the scale of Rs.160-300 by revision of pay-scale. The case of the present applicant is almost similar and he cannot be deprived of that benefit. The respondents themselves by the order dated 16.2.87 have given the benefit to Shri K.L. Chopra, Drawing Teacher who was earlier allowed the scale of Rs.80-220 w.e.f. 29.10.53 and he was given the replacement scale thereafter. The K.L. Chopra was, however, given the scale of Drawing Teacher in the grade of Rs.170-380 w.e.f. 5.10.60 but the fact remains that the replacement scale he was given from 29.10.53 was Rs.130-300.

5. The respondents in their counter in para 4(k) have also admitted that the grade of Rs.160-300 was given to Shri Kesho Ram in compliance with Courts orders. Further, the respondents in para 5(e) have admitted that the teachers appointed in the scale of Rs.80-220 were posted in High Schools/Higher Secondary Schools and were allowed to teach higher classes. It is admitted that the applicant was having requisite qualifications for the scale of Rs.80-220. This is contrary to the averment made by the respondents in para 4(ii) under the heading 'reply to 4(a) to (g)' where it is said that the applicant was not possessing requisite qualifications. When the respondents have clearly

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admitted in the reply that the applicant was eligible according to the Recruitment Rules for the then scale of Rs.80-220, then he was rightly fixed in the scale of Rs.160-300 by the respondents themselves by the order dated 5.4.1961. The respondents could not justify withdrawing this order of fixation of pay and superseding the same by another order dated 16.2.63 revising the pay of the applicant to the scale of Rs.130-300. There is nothing on record to justify passing of this order in February 1963.

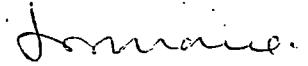
6. There is no one to represent the respondents to convince us as to how the applicant was wrongly fixed in the scale of Rs.160-300 by the earlier order of fixation of pay dated 5.4.61 (annexure 'D').

7. The respondents themselves in pursuance of order of February 1963 (annexure 'E') did not make any recovery of the excess payment made to the applicant in view of the revision of the pay-scale to Rs.130-300 w.e.f. 1.7.59. The case is fully covered by the judgment of Kesho Ram (supra).

8. The application is therefore allowed with the directions to the respondents to allow the applicant the scale of Rs.160-300 on the same pattern with all consequential benefits which have been awarded to Kesho Ram, w.e.f. February 1963. No recovery has to be made from him of any alleged excess payment said to have been made to him on the earlier fixation of pay to the scale of Rs.160-300. The respondents are to comply with the directions within a period of three months from receipt of a copy of this order. The applicant shall also be entitled to other consequential benefits including allowances on the aforesaid scale of pay.

Cost on parties.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (B)