

Central Administrative Tribunal Principal Bench, New Delhi



O.A. No. 255/2016

Today, this the 20th day of November, 2020

Through video conferencing

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Jay Prakash Soja
[Lecturer (Computer Application)]
S/o Sh. Sukh Dev Singh
R/o C-148, Panchwati Apartment
B-9/9, Sector-62, Noida
Aged about 44 years

Presently posted at
Meerabai Institute of Technology
Maharini Bagh, New Delhi.

...Applicant
(through Sh. Sourabh Ahuja)

Versus

1. Govt. of NCT of Delhi
through its Chief Secretary
Delhi Sachivalaya, Players Building
IP Estate, New Delhi-2
2. Principal Secretary/Secretary
Department of Training & Technical Education
GNCT of Delhi
Muni Maya Ram Marg
Pitam Pura, Delhi-88
3. The Principal
Meera Bai Institute of Technology
GNCT of Delhi
Maharani Bagh, New Delhi-65
4. Director
Department of Training & Technical Education
GNCT of Delhi

Muni Maya Ram Marg
Pitam Pura, Delhi-88

..Respondents
(through Sh. Anuj Kumar Sharma)



ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant was appointed as Lecturer in Computer Application in the Department of Training and Technical Education (DTTE) on 18.10.2004, on being selected by the UPSC. By the time he was appointed, there existed a notification issued by All India Council for Technical Education (AICTE) on 30.12.1999, which provided for conferment of senior scale on completion of six years of service subject to selection and thereafter conferment of selection grade on completion of five years of service in the senior scale with certain conditions. The applicant completed six years of service on 18.10.2010. Through an order dated 02.05.2011, the respondents placed 17 Lecturers in the senior scale with effect from various dates. As regards the applicant, it was mentioned that his due date falls after 29.07.2010, i.e., the date on which the Screening Committee met; and accordingly his case was deferred. After making several representations, the applicant filed this O.A. with a prayer to direct the respondents to extend him the benefit of senior scale in PB-3 with Grade Pay of Rs.7000/- w.e.f. 18.10.2010 in terms of Clause 8.2 of the notification issued by AICTE on 30.12.1999; with consequential



benefits. He has also claimed the benefit of selection grade in terms of that very notification.

2. The applicant contends that the respondents denied him the senior scale on completion of six years on the ground that the AICTE issued a notification dated 05.03.2010 providing for nine years of service in place of six years and that the same was adopted by the Govt. of NCT of Delhi on 29.07.2010. According to him, the subsequent change of legal regime does not affect his right, which has accrued to him as on the date of appointment. Reliance is placed upon certain precedents.

4. The respondents filed a detailed reply. It is stated that a Lecturer is required to be extended the benefit of senior scale on completion of six years of service under the notification dated 30.12.1999 adopted by the GNCTD on 12.12.2003, but there was a change with the issuance of another notification dated 05.03.2010, by the time the applicant completed six years of service. It is stated that the Screening Committee has clearly indicated that the applicant did not become eligible to be considered as on 29.07.2010 and thereafter the requirement became as nine years of service in the post of Lecturer. It is also stated that the applicant was conferred senior scale through Office Order dated 06.07.2017 w.e.f. 18.10.2013.

5. On behalf of respondents, an objection is also raised that the O.A. is belated and that the applicant did not challenge the Office Order dated 02.05.2011, wherein he was denied the

benefit or the one dated 06.07.2017, which was issued during the pendency of the OA.



6. We heard Mr. Sourabh Ahuja, learned counsel for applicant and Mr. Anuj Kumar Sharma, learned counsel for respondents, in detail, through video conferencing.

7. It is a matter of record that the applicant was appointed on 18.10.2004 as Lecturer in Computer Application. The advancement in the career is in the form of a placement in the senior scale on completion of six years of service and further movement to the selection grade, on completion of five years. Thereafter, subject to possession of Post Graduation. These two steps are subject to selection. The basis for this progression was a notification issued by AICTE on 30.12.1999. Clauses 8.2. and 8.3 thereof read as under:-

“8.2 Lecturer (Senior Scale):

A Lecturer will be eligible for placement as Lecturer (senior Scale), through a process of selection if he/she has:

- (i) Completed 6 years of service after regular appointment as a Lecturer, with relaxation of 2 years for those with Ph.D and one year for those with M. Phil/M.E./M. Tech.,
- (ii) Participated in one orientation course/induction training and one refresher course or industrial training of aggregate duration of 8 weeks, or has undertaken other appropriate continuing education or training programmes of comparable quality and duration as may be specified or approved by ACIET. Those with ph. D. degree would be exempted from these course/training requirements.



8.3 Lecturer (Selection Grade):

A Senior Lecturer/Lecturer (Senior Scale) who has a Master's degree and 5 years experience as senior Lecturer or Lecturer (Senior Scale), and has consistently satisfactory performance appraisal reports will be eligible to be placed as Lecturer (Selection Grade), subject to the recommendation of the Selection Committee.”

8. This circular was adopted by the Govt. of NCT of Delhi on 12.12.2003. In other words, by the time the applicant was appointed, this was the method of progression. Across the Bar, it is stated that 4 Lecturers were appointed in pursuance of the same advertisement and joined bit earlier, were extended the benefit of senior scale, through order dated 02.05.2011, whereas, in the case of the applicant, it was denied. The reasons stated by the respondents for denial of such benefit is that the AICTE issued notification dated 05.03.2010, providing for different parameters altogether, particularly in respect of senior time scale. The requirement of six years under the earlier notification was modified to the one of nine years. The modification, in turn, was adopted by the Govt. of NCT of Delhi on 29.07.2010, and by that date, the applicant did not complete six years. The legal regime under the notification dated 05.03.2010 was applied to him.

It is fairly well settled that the rights of an employee that stood conferred under the recruitment rules on the date of appointment cannot be modified to his detriment. In other words, any changes, that take place and which workout to the detriment of the existing employees, need to be implemented



only in respect of those employees, who are appointed subsequent to such changes. Reference in this regard can be made to the judgment of Hon'ble Supreme Court in **Chairman, Railway Board & others v. C.R. Rangadhamaiyah & others Etc.** (1997) 6 SCC 623. Their Lordships have undertaken extensive discussion with reference to earlier judgments and summed up the same as under:-

“24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra).”

9. On behalf of respondents, reliance is placed upon a judgment of the Hon'ble Supreme Court in **Union of India vs. Parameswaran Match Works AIR 1974 SC 2349**. That was a case, which arose under the Central Excise Rules and the question was about the quantum of excise duty with reference to the date of notification. Their Lordships held that the duty is to be determined with a notification, which exists from relevant date. That analogy does not apply to service law.



10. The applicant cannot be denied his right, which has accrued to him on the strength of the notification dated 30.12.1999, which existed at the time when he was appointed. The notification dated 05.03.2010 was prospective in operation and it cannot affect the rights, which accrued to the employees in service, by that date.

11. The objection that the applicant did not challenge the Office Order dated 02.05.2011 is not tenable. The reason is that the applicant is seeking a declaratory relief and he cannot be non-suited, simply because an order, which denied him the benefit of senior scale, is not specifically challenged. Similarly, the Office Order dated 06.07.2017 issued during the pendency of the O.A. need not be challenged when the major issue is under consideration. The record discloses that many Lecturers, who were appointed in pursuance of the same advertisement, through which the applicant was also selected and appointed, were extended the benefit of senior scale, on completion of six years of service. The distinction sought to be made vis-à-vis the applicant, is that the notification dated 05.03.2010 came to be adopted by the Govt. of NCT of Delhi on 29.07.2010. In view of the discussion undertaken by us in the preceding paragraphs, these factors hardly matters.

12. We, therefore, allow the O.A. and direct the respondents to extend the benefit of senior scale to the applicant w.e.f. 18.10.2010. The Office Order dated 06.07.2017 issued by the



respondents shall stand modified accordingly. His pay structure shall be modified suitably within a period of two months from the date of receipt of a copy of this order. The case of the applicant shall be considered for selection grade strictly in accordance with the norms under the notification dated 30.12.1999 issued by AICTE. The Screening Committee shall review the case of the applicant with effect from the relevant date and extend the benefit of senior scale on completion of six years of service, subject to his fulfillment of other conditions. We deny the arrears to the applicant on whatever count, due to the delayed filing of the OA.

There shall be no order as to costs.

(A. K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

November 20, 2020
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