

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK,**

ORDER SHEET

COURT NO. : 1
16/10/2020
O.A./260/88/2019

G B PRUSTY
-V/S-
KENDRIYA VIDYALAYA SANGHTHAN

ITEM NO:17
FOR APPLICANTS(S) Adv. : Mr. N.R. Routray
FOR RESPONDENTS(S) Adv.: Mr. H. K. Tripathy

Notes of The Registry	Order of The Tribunal
	<p>Learned counsel for the applicant and respondents are present and heard through Video Conferencing.</p> <p>1. Learned counsel for the applicant submitted that the applicant is a retired teacher of Kendriya Vidyalaya Sangathan (in short KVS) who claims that he was entitled for selection grade pay scale after completion of 24 years of service with effect from 27.8.2007. But he was allowed selection grade w.e.f. 30.2.2009 by the authorities on the ground that he completed 21 days of in-service course which was required to be completed within the preceding 6 years from the date of eligibility. It is submitted that the date of grant of selection was changed from 30.2.2009 to 11.2.2009 vide order dated 6.2.2019 (Annexure-A/17 to the Rely of the applicant to preliminary counter). The applicant's case is that he had completed the required in-service course before his date of eligibility i.e. on 27.8.2007. Learned counsel for the applicant referred to the letter dated 20.1.2010 (Annexure-A/10 series) by which it was acknowledged that since the workshop could not be organized before 12 years of service required for senior scale, it will be granted from the date of completion of 12 years of service. It was submitted that as per the applicant's representation dated 30.4.2016 (Annexure-A/15), no workshop or training course was organized by Regional Office Kolkata during 2007 for which the applicant could not complete 21 days on in-service course by 27.8.2007 and as per the rules, the applicant is entitled for selection grade w.e.f. 27.8.2007 instead of 11.2.2009.</p> <p>2. Mr. H.K. Tripathy, learned counsel for the respondent-KVS opposed above submissions by arguing that the OA is barred by limitation since though the selection grade was allowed to the applicant as per the order dated 10.2.2015 (Annexure-A/8) he failed to challenge the said order within the stipulated time. He further submitted that the applicant completed 21 days of in-service course on 11.2.2009 and since he did not complete 21 days of in-service course within preceding 6 years from 27.8.2007, he has been</p>

correctly granted the selection grade from 11.2.2009. Learned counsel for the respondents also submitted that another OA No. 11/2019 has been disposed of by this Tribunal vide order dated 5.2.2020, copy of which has been filed by him.

3. We have duly considered the submissions as well as the pleadings by both the parties. On the question of delay raised by the respondents, the applicant in his reply to preliminary counter, has cited the judgment of Hon'ble Apex Court in the case of **M.R. Gupta vs. Union of India, 1995 SCC (5) 628** and submitted that his claim for grant of pay scale in selection grade is a recurring cause of action. It was further stated in applicant's reply that the applicant's claim has been rejected by Commissioner, KVS vide his order dated 13.8.2018 (Annexure-A/1 of the OA) by which, the decision in the impugned orders dated 18.4.2016 (Annexure-A/14) and 15.11.2017 (Annexure-A/16) has been confirmed and hence, it is contended by the applicant that the OA is within the limitation period.
4. It is noted that the selection grade was granted w.e.f. 30.2.2009 as per the order dated 10.2.2015 (A/8) and the applicant has submitted the representation on 26.2.2015 (A/9) in which it was specifically stated that non-completion of 21 days training on his part was due to non-organization of in-service course by the concerned regional office and a copy of the circular dated 2.6.2004 was enclosed with the representation in support of his claim. But without considering such contention of the applicant, the respondent no.3 has rejected the claim vide order dated 18.4.2016 (Annexure-A/14). The applicant submitted detailed representation dated 30.4.2016 (Annexure-A/15) which was rejected vide order dated 15.11.2017 (Annexure-A/16) again without answering the applicant's contention that he could not complete 21 days of in-service course by his due date since Kolkata Regional Office in 2007. Similarly the order dated 13.8.2018 (A/1) has been passed by Commissioner relying on the previous orders of the respondent no.3 and without considering the grounds submitted by the applicant. We take note of the fact that vide order dated 6.2.2019 (Annexure-A/17), the selection grade to the applicant was allowed w.e.f. 11.2.2019 in place of 30.2.2019 as per the order dated 10.2.2015 (Annexure-A/8).
5. Applicant's claim for grant of selection grade w.e.f. 27.8.2007 in place of 11.2.2009 is clearly a recurring cause of action since if such claim is allowed, his salary will be higher which will also increase his retirement benefits including pension. Further, the sequence of facts as discussed in the preceding paragraph. Shows that the claim of the applicant has been rejected without considering the merit of his claim. It is also noted that the applicant's claim will not affect any other employee as grant of selection grade in this case is not subject to assessment of merit vis-a-vis other employees as in case of promotion. Further, vide

order dated 6.2.2019 (Annexure-A/17), the date of allowing selection grade was modified from 30.2.2009 to 11.2.2009. Hence, taking into account the factual circumstances as above, we are of the view that the applicant's claim in this OA is not barred by limitation.

6. Learned counsel for the respondents has cited order of this Tribunal passed in OA No. 11/2019 in which the matter was remitted to the authorities for re-consideration. Applicant's counsel pointed out that the claim in OA No. 11/2019 was for grant of senior scale after completion of 12 years of service, where as in the present OA, the claim is for selection grade after completion of 24 years of service. Perusal of the order dated 5.2.2020 of this Tribunal passed in OA No. 11/2019, it is seen that in that OA the applicant had claimed the benefit of senior scale w.e.f. 20.11.2014 in place of 3.1.2016. By the due date i.e. 20.11.2014, there was a shortfall of one day of in-service course of the applicant in OA No. 11/2019 for which the applicant had claimed relaxation. After examining the circular dated 2.6.2004 of KVS on the subject and the facts, it was held by this Tribunal in OA No. 11/2019 as under:

"9. As laid down in the circular dated 2.6.2004, if a teacher was provided sufficient opportunities to attend the required 3 weeks in-service training during the relevant period prior to eligibility for sanction of senior scale and the concerned teacher did not attend such training course on some pretext, then the date of sanction of senior scale will be the date from which he/she completed that requirement of in-service training. The respondents in this OA have applied this principle for the applicant, for whom the relevant period was from 20.11.2008 to 19.11.2014. But there is nothing on record furnished by the respondents in their pleadings to prove that sufficient opportunity was given to the applicant to undergo training during the period in question. The impugned order at Annexure-A/6 and the Counter are silent as to whether the applicant was deputed for 3 weeks of in-service training course during the period from 20.11.2008 to 19.11.2014 and she did not avail of the same. From the documents furnished by the respondents it appears that the applicant was not deputed for any training during the above period. As contended in para 10 of the Counter, the applicant was expected to submit a representation to the authorities about her training and she never approached the authorities about it. But the policy circular dated 2.6.2004 does not require the applicant to submit any representation for being deputed for in-service training within the required time. Hence, we are unable to accept such contentions of the respondents.

10. **For the reasons as discussed above, the impugned order dated 20/21.8.2018 (Annexure-A/6) for rejecting applicant's claim is not sustainable under law as it is not mentioned in accordance with the circular dated 2.6.2004 (Annexure-B of the Preliminary Counter filed by the respondents) and hence, it is liable to be quashed. The said order is accordingly quashed and the matter is remitted to the respondent no. 4 to reconsider the representation dated 2.5.2017 (Annexure-A/5) of the applicant in the light of the circular dated 2.6.2004 and pass a fresh speaking order, copy of which is to be communicated to the applicant within 2 (two) months from the date of receipt of a copy of this order. It is made clear that if any opportunity was allowed to the applicant to attend at least 21 days of in-service training during the period from 20.11.2008 to 19.11.2014 and the applicant had not availed the same, as per the records available with the respondents, then as per the circular dated 2.6.2004, the applicant will not be entitled for the benefit of the senior scale w.e.f. 20.11.2014 and if no such opportunity was allowed to the applicant, then she will be eligible for such benefit. If the applicant is found eligible for the benefit of the senior scale w.e.f. 20.11.2014, then consequential service benefits as per the rules are to be allowed in favour of the applicant within a period of four months from the date of receipt of a copy of this order."**

7. In the present OA before us, the contentions of the respondents are similar as in OA No. 11/2019 and there is nothing in the impugned orders as well as in the pleadings of the respondents to show that it was the fault of the applicant for not availing in-service courses organized by the respondents prior to the due date i.e. 27.8.2007. The respondents have not contradicted applicant's contention in his representations dated 26.2.2015 (A/9) and 30.4.2016 (A/15) that the Regional Office Kolkata did not organize any in-service course during 2007 when the applicant was posted in that Region. There is nothing in the pleadings of the respondents to show that Regional Office, Kolkata had organized in-service courses in 2007 prior to 27.8.2007 in which the applicant had opportunity to attend to fulfil the eligibility requirement.

8. In view of the discussions above and taking into consideration the factual circumstances of this

case as discussed earlier and the order dated 5.2.2020 passed by this Tribunal in OA No. 11/2019, the impugned orders at Annexure-A/1, A/14 and A/16 of the OA are set aside and the matter is remitted to the respondent no.3 to reconsider the applicant's representation dated 30.4.2016 (Annexure-A/15 of the OA) in the light of the circular dated 2.6.2004 of the KVS and pass a fresh speaking order, copy of which is to be communicated to the applicant within two months from the date of receipt of a copy of this order. It is made clear that if any opportunity was allowed to the applicant to attend at least 21 days of in-service training within the period of 6 years preceding the the date of completion of 24 years of service on 27.8.2007 and the applicant had not availed the same, as per the records available with the respondents, then as per the circular dated 2.6.2004, the applicant will not be entitled for the benefit of the selection grade w.e.f. 27.8.2007 as claimed by him and if no such opportunity was allowed to the applicant, then he will be eligible for such benefit. If the applicant is found eligible for the benefit as claimed, then consequential service benefits as per the rules are to be allowed in favour of the applicant within a period of four months from the date of receipt of a copy of this order.

9. The OA is allowed as above. No order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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