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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Registration O.A. No.1336 of 1987

Miss Majida Begum Applicant

Versus

Union of India & Others Opposite Parties

Hon. Mr. Justice Kamleshwar Nath, V.C.

Hon. Mr. P.C. Jain, A.M.

(By Hon. Mr. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for suitable orders to implement a pay fixation order Annexure-A1 dated 6.4.84 by which the applicant was awarded a Selection Grade. There is also a prayer for recovery of Rs.4000/- which has been deducted from the applicant's salary and Rs.20,000/- as damages from opposite party No.3.

2. The applicant, Miss Majida Begum was a Post Graduate Teacher in the Govt. Senior Secondary School, Bulbulikhana (for short, Bulbulikhana School), New Delhi when she was awarded a Selection Grade scale of Rs.775-1000 with effect from 1.8.1980 (erroneously mentioned as 1.1.80 in the application) by order dated 6.4.84, Annexure-A1 of the Director of Education. Opposite Party No.3 Mrs. V. Manchanda was the Principal of Bulbulikhana School. The applicant's complaint is that in order to torture and

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harass her the opposite party No.3 did not fix the applicant's salary in the Selection Grade and consequently was deprived of the arrears thereof. Rs.4,000/- are claimed in respect of the period from 23.12.82 to 3.4.83 when the applicant having been transferred from Bulbulikhana School to the corresponding Zeenat Mahal School, she was not allowed to work in the Bulbulikhana School though the order of transfer was cancelled & the period from 23.12.82 to 3.4.83 was regularised as leave period. The applicant's case is that she was 'forced' to take leave and therefore she must get Rs.4,000/- being the salary of the period in question. Damages of Rs.20,000/- are claimed against opposite party No.3 on the allegation that the applicant was deprived of the above mentioned benefits because of the harassment and mental torture caused to her by opposite party No.3.

3. A written statement was filed on behalf of the opposite party No.3; the Department represented by opposite parties 1 & 2 did not file any written statement.

4. The case of the opposite parties is that apart from the merits, this Tribunal has no jurisdiction to grant damages for alleged harassment and torture of the applicant by opposite party No.3. The contention is correct; a claim of damages is not a part of claim arising out of service conditions. It is in the nature of a tort, civil wrong, for which the jurisdiction would lie elsewhere.

5. It is next contended that the claim for recovery

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of Rs.4,000/- is misconceived because the applicant had been transferred by order dated 23.12.82 which transfer order was cancelled and cancellation intimated to opposite party No.3, the Principal, on 3.4.83 and in the meantime the applicant was on leave on her own request. It is not shown that the transfer order had been cancelled shortly after 23.12.82 but opposite party No.3 refused to acknowledge it. We are unable to hold therefore that the applicant was 'forced' to remain on leave during the intervening period. The claim for that amount also must fail.

6. The real controversy relates to the fixation of pay in the Selection Grade and recovery of arrears. It is admitted that by order Annexure-A1 dated 6.4.84, the applicant had been awarded Selection Grade with effect from 1.8.80 in the scale of Rs.775 - 1000, her earlier scale being only Rs.550 - 900. Even opposite party No.3 admitted that the applicant was entitled to the difference of pay between the two scales with effect from 1.8.80. It is however pleaded by opposite party No.3 that the failure to fix the pay in the Selection Grade and to grant the arrears of salary is a result of the applicant's own in-action. The case of the opposite party, not disputed by the applicant in the rejoinder, is that the applicant was initially working in the Govt. Girls School Chasma Building when orders for fixation of her pay on the basis of the pay scales of the Third Pay Commission with effect from 1.1.1974 were passed on 13.9.80. Before

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her pay could be fixed in the Govt. Girls School at Chasma Building, the applicant was transferred to Bulbulikhana School where opposite party No.3 came to be transferred as Principal in 1982. It is said that when the applicant complained about non fixation of her pay to opposite party No.3, the latter advised the applicant to have her pay matters transferred from Govt. Girls School, Chasma Building to Bulbulikhana School which was done under Accounts Officer's order dated 8.4.85. It is said that opposite party No.3 further directed the Head Clerk to take necessary action in that regard. The difficulty arose at that stage. Besides, the direction to Head Clerk to take necessary action, the applicant was asked to submit a drawn statement, i.e., a statement of the salary already drawn by the applicant, during the period in question. The applicant, however, did not furnish any drawn statement. It has been clearly stated in para 6 of the Counter Affidavit that opposite party No.3 fixed the pay of the applicant at Rs.880/- + Rs.20/- P.P. with effect from 1.8.80 which is recorded at page 20 of the Service Book. There is no denial of this statement in the rejoinder. However the case of the applicant is that she was in no position to submit a drawn statement and ~~it~~ was the duty of the opposite parties to collect the relevant data from the bills or Acquittance Rolls and find out the amount payable to the applicant.

7. It is further admitted that some time later both the applicant and opposite party No.3 ceased to work

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in the Bulbulikhana School. The applicant was transferred as Vice Principal to the Zeenat Mahal School; the opposite party No.3 was transferred as Principal to the Govt. Girls Senior Secondary School, Dayanand Road, New Delhi. The stand of the opposite party 3 is that as Vice Principal of Zeenat Mahal School, the applicant was her own Drawing and Disbursing Officer and therefore it was her own duty to prepare the bill and submit to the Accounts Officer and draw the amount.

8. Having heard the counsel for both the parties we notice that the dispute in the case is practically no dispute and is only a result of inaction of the competent authorities of opposite parties 1 & 2. It is plain enough that the applicant could not be expected to maintain an account of the salary which she had drawn from time to time; no rule requires ~~anyone~~ an employee to maintain any such statement. The maintenance of statement privately may not even be accepted by the competent authority; it is the ultimate official record which is relevant. The finding of the official record, the fixation of pay, and the determination of the amount to be paid is purely a ministerial function of the Accounts Office. It was entirely their responsibility to collect the relevant data from the concerned Offices or Schools.

9. It is also clear that till the applicant was working in the Bulbulikhana School, she was not the Drawing and Disbursing Officer. Even after she became

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Vice Principal of the Zeenat Mahal School and became her own Drawing and Disbursing Officer, she would not have been in any position to make a refixation of her salary and collect her arrears unless the necessary particulars had been collected from the Govt. Girls School Chasma Building and from the Bulbulikhana School. After all, the applicant could not have been interested in delaying fixation of pay and recovery of arrears in her own case. There must have been an impediment beyond her control.

10. It may be mentioned that in the meantime several orders had been issued, which are on the file, by the Director of Education to the Bulbulikhana School to make payment of the salary to the applicant and that is why the opposite parties 1 & 2 have not filed any written statement in the case. The result, nevertheless, is that it is the responsibility of opposite parties 1 & 2 to make a proper refixation of the applicant's salary and to pay her arrears with effect from 1.8.80. It may become necessary for them to take some coercive and disciplinary action against the defaulting officials of the concerned Accounts Office but they must find their way to enforce their own orders and ensure refixation of the applicant's salary and payment of arrears thereof. We are of the opinion that in the facts and circumstances of the case, the applicant is not entitled to any relief personally against opposite party No.3; but the case must succeed against opposite parties 1 & 2.

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11. The petition is partly allowed and it is directed that opposite parties 1 & 2 shall have the applicant's pay fixed in the Selection Grade of Rs. 775 - 1000 with effect from 1.8.1980 in terms of orders dated 6.4.84 contained in Annexure-A1 and pay the arrears of the applicant's salary since the aforesaid date. The opposite parties 1 & 2 shall comply with these orders within a period of three months from / date of receipt of a copy of this order.

12. Parties shall bear their costs.

Chm:
(P.C. JAIN)
Member (A)

Knath
(Kamleshwar Nath)
Vice Chairman

pronounced in open court.
Dated the 14th Dec., 1989.

RKM

Chm:
14/12/89