

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
* * *

O.A. NO.1900/87

DATE OF DECISION : 08.01.1993

Shri I.P. Aggarwal ... Applicant

Vs.

Union of India & Ors. ... Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ... Shri G.D. Gupta

For the Respondents ... Shri B.R. Parashar

1. Whether Reporters of local papers may be allowed *to* see the Judgment?

2. To be referred to the Reporter or not?

J.P.
(J.P. SHARMA)
MEMBER (J)

P.C.
(P.C. JAIN)
MEMBER (A)

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Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

S. C. D. Gupta

...In Person

For the Respondents

...Shri B.R. Parashar, Counsel

JUDGMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant was initially appointed as TGT in Shri Kripa Ram Bansal Higher Secondary School, Delhi, which is recognised and aided by Delhi Administration, on 17.7.1963. He was promoted and confirmed as PGT in 1966. The applicant was subsequently appointed on ad-hoc basis on promotion as Principal on 23.8.1971. He was confirmed in the said post as Principal of the aided school w.e.f. 21.2.1976 vide order issued on 5.9.1986. The applicant was, however, rendered surplus and was absorbed in the Directorate of Education w.e.f. 28.4.1980 invoking the provisions of Rule 47 (1) of Delhi School Education Rules, 1973. At the time of absorption, the applicant was posted as Principal in Government Co Education Senior Secondary School, Isapur on ad-hoc basis.

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2. There are certain posts in the Directorate of Education, Delhi Administration, which are filled by transfer of Principal of schools. These posts are as follows :-

- (1) Principal, Teacher's Training Institution,
- (2) Deputy Education Officer,
- (3) Plan Evaluation Officer,
- (4) Lecturer, State Institute of Education,
- (5) Research Officer (Patrachar) and
- (6) Senior School Inspector.

The applicant was appointed on 20.5.1980 on one of the above mentioned posts, i.e., Deputy Education Officer. On 22.7.1980, he was transferred again as Principal of Government Co-Education Senior Secondary School, Isapur. On 2.7.1983, he was again transferred to the post of Deputy Education Officer and had been working on that post from that time. The present application was filed under Section 19 of the Administrative Tribunals Act, 1985 on 11.12.1987. It appears that the applicant from this post has been transferred on 13.5.1988 as Assistant Director of Education (Planning).

3. The Government of India (Ministry of Education and Culture, Department of Education) introduced stagnation increments w.e.f. 5.9.1982 by issuing a circular dt. 11.4.1983 (Annexure G). This circular was followed by further circulars, which the applicant has filed collectively as Annexure H to the application. By the circular dt. 28.8.1984, the grant of stagnation increment was extended to the Principals, Vice-Principals, Lecturers working in the schools in various union territories except Chandigarh. Earlier the stagnation increment was

allowed only to Teachers for 1987. Three stagnation increments have been released/granted to the Principals. The third stagnation increment was announced by the circular dt. 5.9.1984. So far the facts are not disputed.

4. The applicant in this application has claimed for the following reliefs :-

To issue appropriate order or orders, direction or directions :

- (i) quashing the letter dated 13.10.1986 and clarification dated 3.11.1987, referred to above.
- (ii) declaring the applicant entitled to stagnation increments for the years 1984 and 1985 with all consequential benefits and all other allowances like special allowance/teaching allowance, medical allowance and all other benefits like retirement/superannuation at the age of 60 years as admissible to the Principals and declaring that the applicant has to be treated as Principal for the grant of service conditions as basically he remains the Principal even though he may be transferred on other posts mentioned above with all consequential benefits.
- (iii) directing the respondents to treat the applicant Principal for grant of benefits like grant of stagnation increments, special allowances, retirement benefits as permissible to the Principals even while working on equivalent posts mentioned above with all consequential benefits.

5. The grievance of the applicant is that he was entitled to the grant of stagnation increment in August, 1984 and he was refused the same because he was working on the post of Deputy Education Officer. He submitted a representation for the grant of stagnation increment on 13.2.1987 (Annexure I). He submitted another representation in March, 1987 to which the applicant was informed that the matter has been referred to the Government of India, Ministry of Human Resources and Development (Department of Education) and the order for grant of stagnation increment applied only to teachers, Librarians, Laboratory Assistants, Vice-Principals and Principals working in the schools and did not apply to other categories in analogous or inter-changeable posts or those filled from amongst PGT/Principals etc. (Annexure K). Since the applicant was not granted the stagnation increment, so the present application has been filed.

6. The other grievance of the applicant is that by another circular dt. 12.8.1987, the Ministry has ^{revised} ~~refused~~ the scales of various categories of posts in the Directorate of Education. The grant of special allowance of Rs.150 p.m. to Vice-Principals and Principals of Senior Secondary Schools and Secondary Schools has also been announced. This teaching allowance/special allowance is admissible only for performing

the duty of a teacher and as such, the said allowance will not be admissible for any other post. So the applicant in the present application has also prayed for the grant of the same.

7. The respondents contested the application and filed the reply stating that the applicant has not completed the requisite teaching experience required for the post of Principal but he could have been promoted to the post of Principal being the senior most PGT in this aided school. The applicant was confirmed as Principal w.e.f. 21.2.1976 in the particular Government aided school. He has not yet been confirmed as Principal in Government Boys Senior Secondary School, Delhi Administration. However, it is admitted by the respondents that there are analogous posts filled by transfer from the Principals on verbal or written request and it is not feasible on administrative grounds to take the consent of every individual. The applicant was taken on the strength of the Directorate w.e.f. 28.4.1980 and has been posted as detailed in the application. The Government of India, however, has agreed to give notional benefit of stagnation increment to the officers who are transferred back to the post of Principal from the equivalent posts from the date of repatriation to the original post. It is admitted that these posts are equivalent to those of Principal in status and scale. It is, therefore, ~~in~~ short stated that as per existing instructions of Government of India, the officers working on

analogous posts are not eligible for grant of stagnation increments and other pecuniary benefits granted to those working in schools as Principals. The applicant is also not eligible for the fixed medical allowance to the tune of Rs.15/- p.m., but instead they are extended the benefit of reimbursement of medical expenses under Rules.

8. The applicant has also filed the rejoinder to the above reply stating that he had requisite experience for appointment as Principal for more than ten years and the Recruitment Rules do not specify that the applicant should have ten years' experience in the same school. It is further stated that there cannot be a second time confirmation when the applicant has already been confirmed w.e.f. 21.2.1976 in a Government aided school. Other facts stated in the application have been reiterated except that in the circular dt.17.3.1988 the Directorate of Education on the clarification of the Ministry has clarified that all the persons working on analogous posts or those who have sought reversion to their substantive posts will get the same benefits as were allowed to Principals subject to the condition that the post held by them at the time of reversion is on ad-hoc basis. It is further stated in the rejoinder that the answering respondents have indirectly been agreed that the applicant has denied the benefit of the stagnation increment without any reason or rhyme. A reference

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has also been made in the rejoinder to the circular dt. 14.10.1988 issued by the Ministry of Human Resources and Development (Department of Education) that the stepping up of pay be given to the Deputy Commissioners, Deputy Director of Education, Education Officers in view of the fact that their juniors, who were Principals are getting higher pay by being granted stagnation increments. The same principle has not been extended to those, who are working on equivalent posts like Deputy Education Officer etc. A copy of that circular has also been filed as Annexure P-1.

9. We have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicant argued that the applicant is entitled to stagnation increment for 1.8.1984, 1.8.1985 and 1.8.1986 because he was working on analogous and equivalent post without any additional benefits. He has highlighted the fact that the applicant was appointed as Principal and so he still holds the post of Principal. He has also/confirmed as Principal from a retrospective date though by the order dt. 5.9.1986 w.e.f. 21.2.1976. In the various transfer orders transferring the applicant from the post of Principal, Isapur school to Deputy Education Officer and again from the post of Deputy Education Officer to the post of Principal, Isapur, he has been shown as Principal. The applicant without his consent was transferred on the equivalent post of Deputy Education Officer. The post

of Deputy Education Officer is equivalent and interchangeable post with that of the Principal. A Principal can at any time be transferred as Deputy Education Officer and vice-versa. It is further argued that to deny the benefits of the post on which one is appointed and is still working on it is to deny him the basic rights and benefits which are attached to the post. The learned counsel for the applicant has also referred to the common seniority list filed as Annexure to the application. The various circulars issued by the Ministry of Human Resources and Development, Department of Education also go to show that the benefit of stagnation increment, which was first extended only to the teachers, Librarians, Lab Assistants was also subsequently extended by the circular of 1984 to the Principals of the institutions. The stand of the Ministry of Human Resources and Development has been changing from time to time. By the circular dt. 28.8.1984 (Annexure R1 to the counter), it has been directed that, "The sanction of the President is conveyed for the grant of two stagnation increments, one w.e.f. 5.9.1982 and the other from 5.9.1983 to the Principals, Librarians and Lab Assistants working in schools in various union territories except Chandigarh." The Director of Education, Delhi by the letter dt. 15.9.1986 has recommended for the grant of stagnation increments to officers working on posts analogous and inter-changeable to those of teachers. The Ministry of Human Resources and

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Development by another circular dt. 13.10.1986 denied the benefit to the incumbents working on analogous and interchangeable posts. However, subsequently by the circular dt. 7.4.1988, another clarification regarding stagnation increment was issued by the Ministry of Human Resources and Development on that basis. Another circular was issued on 13.4.1988 by the Director of Education that, "It has been clarified by the Government of India that the clarification as furnished by the Ministry vide their letter No.F.5-233/82/UTI dt. 29.2.1982 will also be applicable in the case of transfer from equivalent posts. Likewise those holding higher posts including the post of Deputy Director on ad-hoc basis will also get the benefit." During the course of the arguments, the circulars dt. 17.3.1988 and 29.2.1988, referred to above have also been filed on record. In the above conspectus of circumstances, it is evident that when there is a common seniority list and the posts are interchangeable and equivalent in status, then the benefit cannot be denied of stagnation increments to those holding analogous posts and that will amount to discrimination. If a person, who ranked senior in the seniority list of the Principals joins an equivalent/analogous post mentioned above, then he will be in a disadvantageous position than one who continues as Principal and will continue to draw the benefits and will be getting higher pay than his senior. The applicant became stagnant in the year 1982 and he has claimed the grant of the first

stagnation increment when the same was made applicable to the Principals by the circular dt. 28.8.1984 filed along with the counter. There is no justification, therefore, by the respondents in not granting the stagnation increment to the applicant who has all along been designated as Principal, though may not be confirmed in his appointment under Delhi Administration schools. He is still confirmed in the Government aided school w.e.f. February, 1976 by an order issued on 5.9.1986 (Annexure A). The applicant is, therefore, entitled to the grant of this benefit.

10. As regards the grant of special allowance/teaching allowance of Rs.150/- p.m., the claim of the applicant is not justified. The circular dt. 3.11.1987 (Annexure P) specifically lays down in column-11 at p-77 of the paper book that the teaching allowance/special allowance is admissible only for performing the duties of a teacher. Since the applicant has not been performing the duties of a teacher and was working on an equivalent/analogous post of Deputy Education Officer, he cannot claim teaching allowance/special allowance which is not part of the pay. The claim in that regard, therefore, is misconceived.

11. During the course of arguments, the learned counsel for the applicant has not pressed about the age of superannuation of 60 years and as such, that claim of the applicant is not considered in the present application.

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12. As regards the grant of medical allowance of Rs.15/-p.m., there is nothing on record to justify this claim also because the applicant is liable to be compensated by reimbursement of the medical expenses incurred, as averred by the respondents in reply to para-9 of the application. This medical allowance of Rs.15/- p.m. is allowed only to the teaching staff working in the schools and since the applicant ceased to work in the school, so he cannot claim the same as of right. There cannot be any discrimination because the benefit of reimbursement of medical expenses under rules has been extended to him.

13. In view of the above facts and circumstances, the present application is allowed with the following directions :-

- (a) The applicant shall be given stagnation increment for the years 1984 and 1985 with all consequential benefits and his pay shall be refixed on that basis and shall be entitled to all consequential benefits of arrears of pay and other allowances.
- (b) The relief with regard to the grant of special allowance/teaching allowance of Rs.150/- p.m. and of medical allowance of Rs.15/- p.m. are disallowed.
- (c) The relief with regard to the retirement/superannuation at the age of 60 years as admissible to the Principal has not been pressed and the same has not been considered.
- (d) The respondents shall comply with the above directions within a period of three months from the date of receipt of a copy of this judgment.
- (e) In the circumstances, the parties shall bear their own costs.

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J. P. SHARMA
MEMBER (J)

Sharma

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Dec 5/1993
(P.C. JAIN)
MEMBER (A)