

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A. No.21/1987.

Date of decision: July 27, 1992.

Shri R.K. Sharma ... Petitioner.

Vs.

Delhi Administration & Ors. ... , Respondents.

CORAM:

HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.

HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the petitioner ... Shri B.S. Gupta, counsel.

For the respondents ... Shri Ashok Kashyap, counsel.

JUDGMENT (ORAL)

(HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN)

The petitioner who retired as Principal from the Delhi Administration has filed this petition, Having died during the pendency of these proceedings, his legal representative, the widow, has come on record to prosecute these proceedings. The rights the widow can claim are those which her husband was entitled to claim before his death. We refer to the original petitioner as the petitioner in this judgment and not to his legal representative.

2. The petitioner started his career as a Master in the State of Pataudi in the year 1949. That State stood merged in the State of Punjab whereupon he became an employee of the Government of Punjab. On coming into force of the States reorganisation, the State of Punjab was bifurcated and a new State of Haryana was constituted whereupon the petitioner stood allotted to the State of Haryana. When he was serving as the

Master of the State of Haryana, applications were invited for the post of Principals in the Delhi Administration. The petitioner offered himself for the post of Principal and got himself selected. He was appointed on 15.9.1972 as Principal on a probation of two years. His probationary period was declared as having been satisfactorily completed with effect from 14.9.1974. In the circumstances the petitioner prayed for confirmation. His request was not considered on the ground that the seniority list of Principals could not be finalised having regard to the pendency of several court cases. That is clear from Annexure 'B' dated 8.12.1982. The petitioner retired on attaining the age of superannuation on 30.9.1982. This petition was presented in the Tribunal on 6.1.1987 in which the petitioner has prayed for a direction to confirm him from the date he became eligible in a substantive capacity against a permanent post and for a further direction to pay him pension and gratuity at the rates applicable in the state of Delhi after confirmation and appointment in substantive capacity with penal interest @ 12% per annum.

3. The petitioner's case is that though vacancies were available and his record of service was satisfactory, he was not confirmed in service which resulted in his being deprived the pensionary and other retirement benefits from the Delhi Administration. The petitioner was not given pension by the Delhi Administration, according to the petitioner, on the ground that he has not been

confirmed in service. He was, therefore, only given the benefit of gratuity. It is his case that one Shri Budh gain sharma who was junior to him in the cadre of Principals had approached the Supreme Court for relief, he also having been denied the benefit of confirmation. When the matter was pending before the Supreme Court, Shri Budh gain sharma was confirmed with effect from 30.9.1985 the date on which he retired on attaining the age of ~~superannuation~~ ^{superannuation}. In the light of the said order of confirmation, the Supreme court directed for working out all the retirement benefits and being given to him. The petitioner's case is that when his junior got this benefit of confirmation and consequent retirement benefits, there was no justification to deny similar treatment to the petitioner. The petitioner also maintains that he being senior to Shri Budh gain Sharma, there being available substantive vacancies of Principals before his retirement, he was entitled to be confirmed and given the consequential retirement benefits.

4. That the petitioner is senior to Shri Budh Sain Sharma has not been denied. That the petitioner satisfactorily completed his period of probation and that he has rendered satisfactory service is also not denied. There is no positive averment in regard to non-availability of vacancies in which the petitioner could be confirmed before his retirement on 30.9.1982. We cannot grant relief in favour of the petitioner regarding confirmation merely because his junior Shri Budh gain Sharma was confirmed with effect from 30.9.1985.

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The petitioner having retired on 30.9.1982 and if substantive vacancies became available after his retirement from service in which Shri Budh Sain sharma could be confirmed, the petitioner cannot claim ^{the benefits} merely on the ground that he is senior to Shri Budh Sain sharma and secure confirmation on a date before his retirement. That would depend whether a substantive vacancy was available in which the petitioner could be confirmed. Though the petitioner cannot claim any relief merely because Shri Budh Sain sharma got relief, we are satisfied that the claim of the petitioner for confirmation before his retirement has not been examined. The respondents have not produced any decision wherein they have taken the view that the petitioner is not entitled for confirmation before his retirement either on the ground that there was no vacancy available or on the ground that he was not found suitable for confirmation. The only question that survives for examination is as to the availability of vacancy in which the petitioner can be confirmed before 30.9.1982. Such investigation has not been done and the reason given by the respondents is that the seniority list could not be finalised due to the pendency of several court cases. Since more than a decade has elapsed by now, we hope that the question of finalisation of the seniority list has achieved finality. Even if it is not so, the petitioner cannot be denied his rights. All that can be said is that it may take some time for taking decision in regard

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to the seniority list. But merely because the seniority list has not been finalised, the petitioner's right for confirmation cannot be denied to him. We are satisfied that the petitioner's case for confirmation has not been considered so far. As the entitlement of pension and other retirement benefits of the petitioner depends upon the confirmation of the petitioner, it is but proper that we should direct the authorities to examine this aspect of the matter. On this ground the petitioner is entitled to succeed.

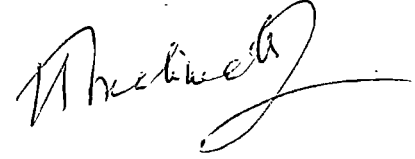
5. For the reasons stated above, this petition is partly allowed and the following directions should issue:

- (i) The respondents shall consider the petitioner's case for confirmation in a substantive ^{if} vacancy ~~if~~ available before his retirement on 30.9.1982;
- (ii) if on consideration of the petitioner's case as aforesaid, he is confirmed in service, the respondents shall revise the retirement benefits to which the petitioner became entitled to consequent upon his confirmation;
- (iii) if the retirement benefits of the petitioner are revised as aforesaid, the arrears shall be worked out upto ^{the} date of death of the petitioner viz. 21.2.1990 and the amount due be paid to the widow of the petitioner who has come in his place as his legal representative;
- (iv) if in the light of the revision of the retirement benefits the petitioner becomes entitled for other benefits, the same may be worked out and accorded to the widow of the petitioner.

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6. Let these directions be carried out with utmost expedition and preferably within a period of four months. No costs.


(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN

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