

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A.-No.

52/

1987

DATE OF DECISION August 5, 1989.

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Munshi Lal _____ Applicant (s)

Shri V.P. Sharma _____ Advocate for the Applicant (s)

Union of India & Another _____ Respondent (s)

Shri Inderjit Sharma _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice Chairman (J).

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed (1) that in Northern Railway zone the Headmasters of Middle Schools run by the Railway Administration are entitled to be granted the selection grade of Rs. 775-1000 (pre-revised) and (2) that the applicant is entitled for the grant of this selection grade, being the seniormost among two Middle School Headmasters with effect from the vacancy occurred. In his rejoinder-affidavit, he has claimed selection grade with effect from 1.7.1980.

2. It is admitted between the parties that the applicant joined on the post of Assistant Teacher on 24.1.1970; that he was given the selection grade of Rs. 740-880 with effect from 1.4.1976 which was applicable for the grade of Trained Graduate Teacher; and that he was promoted to the post of Headmaster of a Middle School with effect from 3.6.1980. The dispute is whether

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there have been two posts of Headmaster of Middle School under the Northern Railway with effect from 1.7.1980 and whether the applicant is entitled to the selection grade of Rs. 775-1000 (pre-revised), which was sanctioned by the Railway Ministry with effect from 1.4.1976 for the Headmaster of Middle School run by the Railway Administration at the rate of 15% of permanent posts in the grade of Headmaster Middle School.

3. The applicant's case is that in addition to the Middle School at Rewari, another Middle School came into existence with effect from July 1980 on the upgradation of the Primary School, Samdari in Jodhpur Division to a Middle School. He, therefore, contends that there have been two posts of Headmaster Middle School in the Northern Railway Zone and in accordance with the Railway Board's letter dated 4/7-10-85 (Annexure 'C' to the application), one of these two posts is to be allowed the selection grade, which has been denied to him in an arbitrary and illegal manner for mala-fide reasons.

4. The respondents' case is that upto March 1987, there was only one post of Headmaster, Middle School under the Northern Railway and, therefore, this single post could not be upgraded to the selection grade post under any order of the Government or the Railway Ministry. It was further argued at the bar that with effect from 1.1.1986, the selection grade in Group D and C posts has been abolished and the post held by the applicant belongs to Group C. It was also argued that the selection grade allowed to teachers in accordance with the Government orders based on the recommendations of the National Commission on Teachers, under the chairmanship of Prof. D.P. Chattpadhyay can be allowed to the applicant only after he has put in 12 years of service in the grade of Headmaster Middle School. It has been admitted that at present (emphasis supplied) there are two posts of Headmaster Middle School under the Northern

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Railway and the selection grade as per the Railway Board's letter dated 31.3.1976 (Annexure 'A' to the application) is to be calculated on the strength of permanent posts in each grade and two permanent posts of Headmaster Middle School do not exist even at present.

5. We have heard the learned counsel for the parties and have also perused the pleadings and other documents on record.

6. The applicant has not been able to allege anything which could substantiate the allegation of mala-fide on the part of the respondents and we, therefore, find no merit in this allegation.

7. A copy of the Ministry of Railways letter No. E(W)86SC2-43, dated 23.4.1987 filed on behalf of the respondents, shows that the Primary School, Samdari in Jodhpur Division under the Northern Railway was upgraded to Middle Standard from July, 1980 with retrospective effect, but the post of Headmaster for the School, along with other posts, was created from the financial year 1987-88. The applicant has not been able to show any sanction for creation of the second post of Headmaster Middle School from a date prior to the financial year 1987-88. However, he has relied on the judgement of the Jodhpur Bench of this Tribunal in the case of KESHAV MATHUR Vs. UNION OF INDIA & OTHERS (A.T.R. 1987 (2) C.A.T. 66) in which it has been stated that this school was upgraded to the level of Upper Primary School i.e., Middle School, w.e.f. 1.7.80. He has also relied on the Divisional Railway Manager, Jodhpur office letter dated 18.2.1986 (Annexure 'B' to the application) from which it appears that one Shri K.N. Bhatnagar, Headmaster, Uchatar Prarambhik Vidyalay, was allowed the pay in the scale of Rs.550-900 with effect from 1.7.1985 for executing the decree in Suit No.199/84 decided by the Rajasthan High Court on 1.4.1985. He has also asserted that once the School at Samdari has been functioning as a Middle School, there must have been a Headmaster appointed to that School even though a formal post may not have been created.

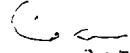
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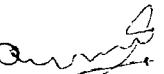
8. The factual position is that the post of Headmaster, Middle School, Samdari has been created only with effect from the financial year 1987-88. Even if it is assumed that the School having started functioning as a Middle School with effect from July, 1980, a post of Headmaster did exist even though not formally created, the applicant even then is not entitled to the relief prayed for because the grant of selection grade was linked to the existence of at least two permanent posts and it has not been shown to us, either explicitly or implicitly, that there were two permanent posts of Headmaster Middle School since 1.7.80. The reliance by the applicant on the Railway Board's letter dated 4/7-10-85 (Annexure 'C' to the application) is not tenable because in this letter only certain information was asked for to enable the Board to consider whether selection grade may be sanctioned for one post in relaxation of the 15% or 20% of the limit even where there were only two or more posts. No such sanction was issued for creating selection grade for one post out of the two posts of Headmaster Middle School. It is not disputed that such orders are implemented on Zonal Railway basis and the number of posts in the entire Railway Administration is not relevant for this purpose.

9. The reliance on the judgement of the Jodhpur Bench of this Tribunal (supra) also does not help the applicant as in the application before that Bench the question of 'equal pay for equal work' was at issue and the applicant therein was allowed the pay of a teacher in Middle School. Similarly, the pay of Shri K.N.Bhatnagar in the scale of Rs.550 - 900 (pre-revised) i.e., the scale for the post of Headmaster Middle School, was fixed in execution of a decree with effect from 1.7.85 and not from 1.7.1980, the date from which the applicant in this case claims pay in the selection grade of Rs.775 - 1000.

10. In view of the above discussion, we hold that in the absence of at least two permanent posts of Headmaster

Middle School under the Northern Railway, and in the absence of the sanction to grant selection grade, in relaxation of the rule providing for 15% or 20%, for one post even where there are only two posts in a grade, the applicant is not entitled to the relief prayed for. The question of sanction of selection grade to the applicant under the new dispensation on the recommendations of the National Commission on Teachers under the chairmanship of Prof. D.P. Chattopadhyay is also not tenable because admittedly he has not put in service of 12 years as yet in the grade of Headmaster Middle School. We, therefore, see no merit in this application which is accordingly rejected. Parties to bear their own costs.


(P.C. JAIN)
MEMBER(A)


(P.K. KARTHA)
VICE CHAIRMAN