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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI

REGN. NO. O.A. 576/87. DATE OF DECISION: 16.9.92

R.D. Saxena & Ors. ... Petitioners.

Versus

Delhi Administration & Ors. ... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioners. ... Shri S.K. Bisaria,
Counsel.

For the Respondents. ... Ms Mukta Gupta, prox
for Mrs Avnish
Ahlawat, Counsel.

The petitioners twelve in number joined service as Post Graduate Teachers in Science in the schools belonging to the Delhi Administration. They were posted as Junior Science Counsellors when these posts were created in the new Science Branch which was established sometime in the year 1972. The post of Junior Science Counsellor carries higher pay scale of Rs.650-1200 whereas the posts in which the petitioners were appointed carry the pay scale of Rs.550-900. When the new Science Branch was opened, the petitioners came to be posted as Junior Science Counsellors. They have been serving in those posts from different dates between 1973 to 1985. They have, however, been paid in the pay scale of Rs.550-900 attached to the post of Post Graduate Teacher. It is in this background that the petitioners have approached the Tribunal for relief in the petition filed in April, 1987.

2. The petitioners have prayed for a direction to absorb the petitioners in the post of Junior Science Counsellor on regular basis with effect from the dates they assumed charge of the said posts on deputation. They have also prayed for a direction to fix their initial pay in the time scale of the Junior Science Counsellor at the stage next above the pay notionally arrived at by increasing their pay in respect of the Post Graduate Teachers pay by one increment at the stage at which such pay was arrived. They have further prayed for consequential payment of all the arrears of emoluments as also stagnation increments which became available from time to time.

3. The learned counsel for the petitioners submitted that the petitioners having been appointed as Junior Science Counsellors and they having discharged their responsibilities of the said posts, they are legally entitled to be paid in the pay scale of Rs.650-1200. It was submitted that well recognised principle of equal pay for equal work must be applied to the facts of this case and the petitioners accorded the pay scale of Rs.650-1200 as that is the scale of pay which is available for those holding the posts of Junior Science Counsellor. The respondents on the other hand submit that the petitioners were, in fact, ^{not} appointed

as Junior Science Counsellors. It is their case that pending regular recruitment to the posts of Junior Science Counsellor, the petitioners were accommodated in those posts in the same scale of pay to which they are entitled to in the cadre of Post Graduate Teachers. It was explained to us that this was done for the reason that most of the members became surplus in the cadre of Post Graduate Teachers and some of them were junior-most in the cadre. It is to accommodate these petitioners that an arrangement was made to adjust them in the available posts of Junior Science Counsellor subject on condition that they carry with them the scale of pay and grade held by them as Post Graduate Teachers till the regular appointments are made. Hence, they maintain that the question of the petitioners being accorded the scale of Rs. 650-1200 of the post of the Junior Science Counsellor does not arise in this case.

4. The petitioners have not produced the orders by which they claim that they have been appointed as Junior Science Counsellors. Along with the reply filed by the respondents, some of the orders pertaining to some of the petitioners have been produced as per Annexures R-1 to R-4. Annexure R-1 pertains to Shri C. Srivastava which says that he is adjusted and posted to Science Centre against a vacant post of Junior Science Counsellor. Annexure R-2 pertains

to Shri Jagdish Chander, who is described as PGT (Physics), and says that he is transferred in his own pay and grade and posted to Science Branch against a vacant post of Junior Science Counsellor. Annexure R-4 pertains to Shri R.D. Saxena and says that he is posted to Science Centre in his own pay and grade against the post of Junior Science Counsellor. Annexure R-4 also relates to Shri S.P. Saxena, PGD (Bio) and it says that he is posted to Science Centre in his own pay and grade against the vacant post of Junior Science Counsellor. It is stated in the reply that similar orders have been passed in favour of all the petitioners.

5. What is more important is the assertion in the reply that there are several persons who are senior in the cadre of Post Graduate Teachers/who have preferential claim for the post of Junior Science Counsellor which carries the higher scale of pay. If it was a question of filling up the posts of Junior Science Counsellor, it is clear that from the cadre of Post Graduate Teachers in Science the seniors would have preferential right for consideration for appointment. The posting was not made on the basis of seniority. On the contrary, it is stated that junior-most surplus Post Graduate Teachers were posted as Junior Science Counsellors. In this background, we are inclined to accept the version of the respondents that ~~they~~ they on equitable consideration posted Teachers in Science who were surplus and would have

been liable for retrenchment as Junior Post Graduate Teachers. At the same time, care was taken not to give them the higher scale of pay attached to the post of Junior Science Counsellor as there were senior Post Graduate Teachers who would have been entitled to the pay scale if regular promotion was made from the cadre of Post Graduate Teachers to the cadre of Junior Science Counsellor. If the petitioner's case is to be accepted, the juniormost who were surplus in the cadre of Post Graduate Teachers would get higher scale of pay of Rs.650-1200 attached to the post of Junior Science Counsellor whereas their own seniors who continue as Post Graduate Teachers would continue in the lower scale of Rs.550-900 attached to the post of Post Graduate Teacher. This would be discriminatory and unjust. Having regard to the facts and circumstances of the case, the principle of equal pay for equal work can not be invoked as this/to prevent retrenchment of the petitioners. It was only ad hoc arrangement pending regular recruitment. Besides, it is necessary to point out that the petitioners accepted the appointments offered to them with the express condition that they would carry the pay scale of Rs.550-900 attached to the post of Post Graduate Teacher without demur. It is only later on that they have made such claim. Having regard

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to this background, it is not possible to accede to the prayer of the petitioners in this case.

6. Be that as it may, it is not just and proper that the posts of Junior Science Counsellor should remain without being filled up on regular basis. The learned counsel for the respondents submitted that recruitment rules have been made and the posts have to be filled up on regular basis from the cadre of Post Graduate Teachers. She was, however, not in a position to place during the course of the arguments an authenticated copy of the full text of the rules said to have been made in this behalf. The counsel for the respondents also pointed out that the interim order made by the Tribunal during the pendency of the petitioner on 24.8.1967 that none of the petitioners should be replaced also came in the way of making regular appointments. Now that this petition is being disposed of which has the consequence of vacating the interim order granted during the pendency of these proceedings, there will be no obstacle in the way of respondents in filling up the vacancies in accordance with the rules. In our opinion, it is just and proper that steps are taken to fill up the posts of Junior Science Counsellor expeditiously.

7. For the reasons stated above, this petition is disposed of only with a direction to the Respondents to take

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expeditious steps to fill up the posts of Junior Science Counsellor in accordance with the law, within a period of four months from the date of receipt of a copy of this judgement. No costs.

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I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

V.S. Malimath
(V.S. MALIMATH)
CHAIRMAN