

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2245/90  
T.A. No.

199

DATE OF DECISION 18.1.91

<u>Shri Jagdish Kumar Bector</u>	<del>Petitioner</del> xxx Applicant
<u>Shri S.K. Bisaria,</u>	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
<u>Lt. Governor of Delhi &amp; ors.</u>	Respondent <sup>s</sup>
<u>Shri M.M. Sudan,</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */*
4. Whether it needs to be circulated to other Benches of the Tribunal? */no*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR. D.K. CHAKRAVORTY, MEMBER)

The question whether National/State Awardees are entitled to extension of service on the basis of such award is in issue in this application <sup>*filed*</sup> under Section 19 of the Administrative Tribunals Act, 1985.

2. The applicant who has worked as Vice Principal in Government Boys Secondary School, Radhey Shyam Park, Delhi, was due to retire on 31.10.90 on attaining the age of 60 years. While he was working as Vice Principal, he was selected/nominated by the respondents for the State award in the field of education and accordingly he was conferred a State award on 5.9.90. He was also given a letter of appreciation by the Director of Education vide

letter dated 13.9.90. The Deputy Director of Education recommended his case for extension of service for a period of two years as per the provisions of Rule 110(2) of the Delhi School Education Rules, which reads as under:-

"110-Retirement Age

(2) Notwithstanding anything contained in sub-rule(1) where a teacher has obtained a National or State Award for rendering meritorious service as a teacher of where he has received both the National and State Awards as aforesaid, the period of service of such teacher may be extended by such period as the Administrator may, by general or special order, specify in this behalf."

3. The respondents informed him that the Administrator has issued an order on 29.5.90 denying the benefit of extension of two years service to the State awardees. The said order which was conveyed by the Joint Secretary(Education), Delhi Administration to the Deputy Director of Education, Act Branch, is in the following terms:-

"I am directed to inform you that the matter regarding granting extension in service to the Teachers/Principals who are National/State Awardees has been reconsidered and the Administrator, Delhi has ordered that:-

- (1) the extension in service on the basis of the State Awards should not be given with effect from the year 1990 i.e. for those teachers/Principals who will be selected for State Award in the year 1990.
- (2) State Awardee would be given a cash award of Rs.5000/- in place of Rs.500/- and a medal of merit alongwith merit scrall.

In view of the above order, I am

to request you to take necessary steps to amend the provision of the Education Act, 1973 accordingly."

4. The contention of the applicant is that the Delhi School Education Act and Rules have been framed with the previous approval of Parliament and came into force only after the publication of the Notification in the Official Gazette and that the order dated 29.5.90 has been issued modifying the Rule 110(2) to the disadvantage of the National/State Awardee without the approval of the Parliament and there is no Gazette notification of the said order withdrawing the benefit of extension of two years service to all those teachers who have been conferred National/State Award in recognition of their excellent service. Thus the said order is illegal, unconstitutional, inoperative, bad and void. He has also stated that the benefit of extension of two years service cannot be withdrawn arbitrarily, unilaterally by the Administrator, when the same has been continuously extended to all those teachers upto the year 1989. The said withdrawal of benefit is without any valid reasons, hence the same is liable to be declared as illegal and unconstitutional.

5. The contention of the respondents is that the applicant is an employee of Delhi Administration and is governed by Rules and Regulation applicable to all the Government servants. His retirement is governed by fundamental Rules. Delhi School Education Act and Rules, 1973<sup>made thereunder,</sup> are not applicable to the employees of Delhi Administration. Delhi School Education Act was enacted

to benefit the employees of private schools. The Delhi School Act, 1973 provides for establishment, recognition, management of the aided and unaided private schools and it provides for terms and conditions of service of employees of recognised private schools. Applicant is, therefore, not entitled to rely upon any provisions of Delhi School Education Act.

6. The respondents have further stated that earlier there was a policy decision to grant extension of service to employees who had received State Award as is clear from the circular dated 8.7.85 issued by the Delhi Administration which inter alia provides as follows:-

"In partial modification of this office circular No.F.32/1/84/Genl./78-Part/1999-2019 dated the 13th July, 1982 it has been decided by the Administrator, Delhi that the Government teachers including Headmasters, Vice-Principals and Principals who are recipient of State/National Awards may be granted extension in service on merit after their attaining the age of superannuation on the following scale:-

STATE AWARD

A teacher obtaining a State Award may be granted extension beyond the age of superannuation on year to year basis for a total period of two years subject to the condition that he/she was physically and mentally alert.

NATIONAL AWARD

A National Award teacher should be granted extension for a period of three years on year to year basis beyond the age of superannuation subject to the condition that he/she was physically and mentally alert.

The person who has obtained both i.e. State and National Awards will also

get extension in all for three years over and above the age of superannuation."

7. With the change of policy in 1990, a State awardee is given a cash award of Rs.5,000/- and no extension is to be granted on the basis of the State Award with effect from year 1990. Applicant has since been paid Rs.5000/- as per the latest policy.

8 According to the respondents, the provisions of the Delhi School Education Act are not applicable to the employees of Delhi Administration. Since a similar benefit was being given to the employees of private and aided schools, the letter of the Delhi Administration dated 29.5.90 specifically refers to amendment of Rules so as to incorporate the provisions of giving cash award of Rs.5,000/- to the State Awardees of private and aided schools. Applicant is to retire as per Fundamental Rules.

9. We have carefully gone through the records of the case and have considered the rival contentions. Even though Rule 110(2) of the Delhi School Education Rules, 1973 contained a provision empowering the Administrator to give extension of service for such period as he may specify in this behalf, the Delhi Administration had issued separate administrative instructions on the subject applicable to the Government teachers including Headmasters, Vice-Principals and Principals (vide circular dated 8.7.85). The provision for granting extension of service to State Awardees being in the nature of concession, it has to be strictly construed. It is clear from a plain reading of Rule 110(2)

of the Rules that it is for the Administrator to specify the period of extension by general or special order. Such an order is essentially administrative or executive in nature. Rule 110(2) does not state that a State Awardee is entitled to extension of service of two years. The Administrator has, as a matter of policy, decided to give Rs.5000/- to a State Awardee in lieu of two years extension of service. We see no legal or constitutional infirmity in his decision.

10. What is stated above is the true legal position, even assuming that Rule 110(2) is applicable to the instant case. It is not the case of the applicant that persons similarly situated like him have been given extension of service on the ground that they are State Awardees after the change of policy decision by letter dated 29.5.90. In that event, it would have amounted to discrimination. In the facts and circumstances, the application is devoid of merit and it is dismissed at the admission stage itself. The interim order passed on 30.10.90 and continued thereafter is hereby vacated. We, however, direct that for the period he has actually worked pursuant to the interim order, the applicant would be entitled to pay and allowances but the period of service so rendered will not count for any other purpose. The parties will bear their own costs.

*D.K. Chakravorty*  
(D.K. CHAKRAVORTY)  
MEMBER

18/11/91

*P.K. Kartha*  
(P.K. KARTHA)  
VICE CHAIRMAN

18/11/91