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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.401/90

NEW DELHI THIS THE 11TH DAY OF NOVEMBER, 1994.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

1. Shri M.P.Sharma
S/o Pt.Jagdish Pershad
Sr.Drawing Teacher,
Govt.Boys Senior Secondary
School, 'G' Block,
Kalkaji, New Delhi.
 2. Shri Amar Nath
S/o Shri Ram Chand
Sr.Drawing Teacher
Govt.Model Senior Sec.School
Vivek Vihar
Delhi-110032
 3. Shri. D.B.Seth
S/o Dr.N.S.Saxena
Sr.Drawing Teacher
Govt.Boys Senior SEcs.
Sechool, G.T.Road
Shahadara, Delhi-32
 4. Shri Rishi Kesh
s/o Shri Kul Chand
Sr.Drawing Teacher
Govt.Boys Sr.Secondary School
No.2
G.T.B.Nagar
Delhi-110 009.
 5. Shri Jagdish Singh
S/o Shri Kanahiya Lal
Sr.Drawing Teacher
Govt.Boys Senior Secondary School,
Magazine Road
New Delhi.
 6. Shri Darshan Singh Bhatia
S/o Shri Khazan Singh Bhatia
Sr.Drawing Teacher
Govt.Boys Senior Secondary School
Lodhi Road
New Delhi.
 7. Shri D.P.Baduni
S/o Shri R.D.Baduni
Sr.Drawing Teacher
Govt.Boys Senior Secondary School,
Sector III,
R.K.Puram, New Delhi.
 8. Shri B.B.Swami,
S/o Shri Dilsukh Rai,
Sr.Drawing Teacher
Govt.Boys Senior Secondary School No.1
Roop Nagar, New Delhi.
 9. Shri Suresh Chander Swami
S/o Late Shri D.R.Swami
Sr.Drawing Teacher,
Govt.Boys, S.S.School No.1
Mori Gate, Delhi.
- Sd/-

10. Shri S.M.Puri
S/o Shri Durga Dass Puri
Sr.Drawing Teacher
Govt.Boys S.S.School
Ashok Nagar, Delhi.
11. Shri Zile Singh Rana
S/o Shri Chander Bhan
Sr.Drawing Teacher
Govt.Boys S.S.School No.1
Najafgarh, New Delhi.
12. Shri Krishan Chander
S/o Shri Mangli Ram
Sr.Drawing Teacher
Govt.Boys S.S.School No.2
Narela, Delhi-40.

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APPLICANTS

BY ADVOCATE SHRI E.X.JOSEPH
WITH N.AMRESH, COUNSEL.

Vs.

1. The Lt.Governor & Administrator
of Delhi, Raj Niwas, Delhi.
2. The Director of Education
Directorate of Education
Old Secretariat, Delhi.

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RESPONDENTS

BY ADVOCATE SHRI ARUN BHARDWAJ.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The 12 applicants in this OA, are Senior Teachers in Drawing. All of them are in Government Boys Senior Secondary Schools run at different places in Delhi and New Delhi by the Directorate of Education of the of National Capital Territory of Delhi. They have come up to this Tribunal with the request that, like in the case of other Senior Teachers in Drawing of the aforesaid institutions, they should also be given the scale of Post Graduate Teacher(PGT) in Drawing.

2. It appears that this matter had been engaging attention of the High Court of Delhi and this Tribunal. Some teachers similarly placed, as the applicants, had moved the High Court by means of CWP No.1479/73(M.L.Sharma Vs.Director of Education). The said petition was disposed of by a learned Single Judge who, in substance, held that the pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the Senior Grade, the petitioner before the High Court who was in the Senior

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Grade would be entitled to the higher scale of pay.

3. Similar controversy came up before this Tribunal in T-1/86(Janak Singh Vs. Director of Education) and T-2/86(K.C. Chauhan Vs. Director of Education). This Tribunal, on 8.1.1987, following the judgement of the Delhi High Court in Sharma's case, passed the following order:

"...in terms of that order in these cases also declare that the applicants in these cases cannot insist that they have a right to teach any particular class though they have a justifiable grievance if their pay and allowances are affected because of retrospective amendment of the recruitment rules. The pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the Senior Grade, the applicants who were in the Senior Grade would be entitled to the higher scale of pay."

4. Another case Thakar Das Sapra and others Vs. LT. Governor (Administrator) Union Territory of Delhi and others came up before this Tribunal which was disposed of on 23.2.1987. This case is reported in (1987) 3 ATC 849). The Tribunal after adverting to the judgement of the Delhi High Court in M.L. Sharma and aforementioned judgements in the cases of S/Sh. Janak Singh and K.C. Chauhan reiterated the view taken in Sharma's case that the pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the Senior Grade, the petitioners before it, who were in the Senior Grade would be entitled to the higher scale of pay.

5. It appears that on 31.5.1988, an Office Order No. 71, was issued by the Directorate of Education, Delhi (Establishment-II). In this letter, there is a reference to the judgement of the Delhi High Court in Sharma's case and on the basis of that judgement, promotions were given to 4 persons. A notice was issued to all concerned that if there is any Drawing Teacher having similar qualifications and is senior to any of the 4 persons mentioned in the order, he should send his representation giving his seniority No., date of birth, date of appointment

full qualifications etc. for necessary action. The last date of the receipt of the representation was fixed as 31.7.1988.

6. On 5.10.1988, another Office Memorandum was issued in which there is a reference to the order dated 31.5.1988. It is stated therein that in response to Office Order No.71, only a few teachers preferred their claims and it is understood that many more senior Drawing Teachers have not applied and may be left out. With that point in view, the list of Drawing Teachers is being recirculated with the remarks that all the Senior Drawing Teachers, who are senior to those who had been given promotion in the Drawing Teachers Grade and have similar qualifications may send their applications for inclusion in the list.

7. Indisputedly, the applicants did not act on the basis of the said office memorandum.

8. 25.11.1988, Office Order No.141 was issued by the Directorate of Education whereby in pursuance of the judgement given in Sharma, Janak Singh and K.C.Chauhan, certain promotions were made.

9. Finally, on 1.1.1990, Office Order No.1 was issued by the Directorate of Education. In this order, there is a reference to the judgement of this Tribunal in C.C.P No.186/88 and the import of this order is that because of the order passed by this Tribunal in the said C.C.P, certain promotions were being made. No less than 23 persons had been promoted.

10. We have considered the case on merits and we have no hesitation in recording the finding that the applicants before us stand on the same footing as those Senior teachers in Drawing who had been given the scale of PGT Drawing. Therefore, the case as it stands at the moment, cannot be differentiated with the case of those who had got the benefit of the senior scale. However,

in order to defeat the case of the applicants, learned counsel for the respondents, has raised the plea of limitation. He placed reliance upon the judgement of the Supreme Court in the case of the Bhoop Singh Vs. Union of India & others(JT 1992 (3) S.C.322). In this case, the petitioner approached the Tribunal after a lapse of about 22 years from the date of accrual of the cause of action . The Tribunal refused to exercise its discretion to entertain the OA and dismissed the same on the ground of limitation and laches. The material facts were these. A large number of police constables of the Delhi Armed Police had participated in a mass agitation in 1967. All of them were dismissed from service. They challenged the legality of the order of dismissal passed against them in batches. They came to this Tribunal with the case that justice and fair play demanded that their cases should be put on par with those constables who had got the relief from the High Court and this Tribunal. The Hon'ble Supreme Court had taken the view that the mere fact that certain police constables who had been similarly dismissed as those who were reinstated on account of judicial orders, there would be no ground for glossing over the fact that the petitioner before it had slept over his rights for about 22 years. Their Lordships distinguished the case of Lt. Governor of Delhi and others vs. Dharampal and others(JT 1990(2) SC 432) cited before them on the ground that in that case this Tribunal had entertained the Original Application and, therefore, by necessary implication, it had condoned the delay in the filing of the Original Application.

11. Having given due consideration to the judgement of their Lordships in the Supreme Court in Bhoop Singh, we feel that the same is distinguishable from the facts of this case. We are saying so because it is an admitted position that in the order dated 1.1.1990 whereby the respondents purported to promote no less than 23 officers

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admittedly two persons had been included and those two persons had not sought the protection of the High Court or this Tribunal. The learned counsel for the respondents had pointed out that those two persons were earlier promoted but eventually they had been reverted. Whatever may be the ground of reversion of those persons, this application cannot be defeated on the ground of limitation. The cause of action accrued to the applicants on 1.1.1990 by the fact that two persons, who had not approached the High Court or this Tribunal, had been promoted by giving them the pay scale of PGT Drawing on the basis of the judgement given earlier. That was enough for the applicants to get over the question of limitation. Admittedly, this OA had been presented within a period of one year from 1.1.1990. Therefore, the same cannot be thrown out on the ground of limitation.

12. We are informed that the case of one of the promotees, who had been reverted, came up before a Bench of this Tribunal (Hon'ble the Chairman and Hon'ble Shri P.T. Thiruvengadam, Member(A)). The learned members quashed the order of reversion. We are also informed that the ground taken for reverting the applicant before the Bench was that he had been erroneously promoted as he did not figure as a party in the earlier litigation filed before the High Court or in this Tribunal. Indirectly, this Tribunal has taken the view that, in spite of the fact that the applicant before it had not moved either the High Court or this Tribunal, the benefit of the judgement of the High Court and the Tribunal, should also be given to the applicant before it so as to bring him on par with those similarly situated.

13. This OA succeeds and is allowed. The respondents are directed to treat the applicants as being in the scale of PGT Drawing with effect from 7.3.1990. We are saying so because this OA was presented in this Tribunal

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on that day. The benefit of the judgement should be given to the applicants as per rules.

14. There shall be no order as to costs.

B. N. Dhoundiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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