

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2605/91 DATE OF DECISION 4.12.92

Ms. Santosh Goswami,

.. Applicant

vs.

The Administrator of Delhi
& Others

.. Respondents

Sri Inderjit Sharma

.. Counsel for the
applicant

Shri B.R. Prasher

.. Counsel for the
respondents

CORAM

1. The Hon'ble Mr. J.P. Sharma, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*

JUDGMENT

(Delivered by Hon'ble Shri J.P. Sharma, Member (A)

The applicant, Language Teacher, aggrieved

by the order dated 13-6-1991 rejecting her representation informing that her pay was correctly fixed at Rs.225/- plus Rs.15 personal pay as on 28-1-1964.

The applicant claimed reliefs:

- 1) To quash the impugned order dated 13.6.1991 with a direction to the respondents ^{to} allow the applicant the same scale of pay of Rs.130-300 with effect from 28.12.1964 on absorption in the Directorate of Education, having been relieved from the parent department of Model Community Centre, where she was declared surplus.

The applicant joined as Social Education worker under the Directorate of Education with effect from 18.11.1952. She was promoted as incharge, Model Community Centre in the pay scale of Rs.80-220 with effect from 1.2.1955. The pay scale of the applicant was fixed at Rs.200/- with effect from 1.7.1959 in the pay scale of Rs.130-300. The scheme of Model Community Centre was wound up and the applicant was appointed as Assistant Teacher in the pay scale of Rs.130-300 and her pay was fixed at Rs.232/- per month. The Accounts Officer of the Directorate of Education, however, by letter dated Nil F-37/10/A(6)/17894, informed the Asst. Director of Education that there is no scale of Rs.130-300 in the CCS (R.P.) Rules, 1960 for the post of Assistant Teacher. The prescribed Scale is Rs.118-225. It was also told that allowing of the former scale to her is without the approval of the Government of India and so necessary approval has to be obtained in that regard. The Assistant Director of Education by letter dated 1-3-1969 (A-5) directed the Principal, CGSS, Chiragh, Delhi that the applicant who was originally appointed as Assistant Teacher in the grade of Rs.130-300 has now

been placed in the grade of Rs.118-225 and that immediate steps be taken to recover the amount over-paid to her as a result of her salary having been drawn in the grade of Rs.130-300.

The applicant continued to make representation to but no effect. Her case is that other staff of Model Community Centre Shri Om Prakash and Sri Rajeshwar Dayal, who have been absorbed like her in the Directorate of Education, had been given the pay scale of Rs.190-425 and also one Mrs. Janki Sharma was absorbed as Language Teacher while the applicant inspite of her better qualifications has been given the scale of Asst. Teacher which was a lower scale to the one she was getting in the Model Community Centre i.e. Rs.130-300. Her representation was disposed of by the impugned order.

The respondents have the case firstly that the application is barred by time; that the applicant filed similar writ petition before the Delhi High Court CW No.340 of 1972, which was dismissed on 18.4.1972 in which she also claimed her absorption in the higher grade. In the reply filed by the respondents, there is no para-wise denial of the submissions made by the applicant in her application.

I heard the learned counsels of the parties at length.

Taking the point of limitation first, it is evident from the record that the Office of the Education Officer by the letter dated 20.1.1989 (Annexure A-9) informed the applicant to take up the matter with the A.O. (Admn.), Distt. South, directly. By the letter dated 10.4.1990 (Annexure-11), the applicant was informed about the sanction of Lt. Governor, Delhi to the protection of her pay under FR 27 read with FR 22-c(ii) on her absorption in Delhi Administration fixing her at pay Rs.225 plus Rs.15 personal pay as on 28.12.1964 with the next date of increment as Nil in the pay scale of Rs.118-225. She represented again on 2-5-1990. Her representation was entertained and considered by the respondents and disposed of by the impugned order dt.13-6-1991 (Annexure-13). This is the order under challenge in this case. In view of this fact, it cannot be said that the present application is hit by limitation because the letter dt.10-4-90 (Annexure-A 11) conveyed fixing of pay under FR 27 read with FR 22-c(ii) for the first time and the applicant obviously made the representation to consider her case for protection of his scale of pay rather than her pay which she was drawing while she was ^{re-} deployed under Directorate of Education from the Model Community Centre.

When once the representation has been considered and the reply has been given to the applicant by the impugned order, so the applicant has a fresh cause of action to challenge the same for a judicial review. The applicant has claimed her protection of scale of pay and not that she should be fixed at the same stage of pay, which she was drawing while she was working in the Model Community Centre.

The next point taken by the respondents is that the applicant has filed writ petition before the Hon'ble High Court, Delhi, which was dismissed by the order dated 18.4.1972. It appears that the writ was dismissed summarily. The applicant in the writ petition has not prayed for the protection of her pay scale. She has only assailed the grievances of not being absorbed on the deployment like other staff members viz. Sri Omprakash and Rajeshwar Dayal who had been given the pay scale of Rs.190-425. She has prayed in the writ petition that she should have been given the equivalent pay scale on deployment in Directorate of Education. Thus, the relief which is claimed in the present petition is obviously different from that which she has claimed in the earlier writ petition before the Hon'ble High Court.

Further, it is evident that the respondents have considered the case of protection of pay of the applicant and not her pay scale by subsequent orders dt.10-4-1990 and the impugned order dated 13.6.1991. Thus, it cannot be said that she had no fresh cause of action for assailing her grievances and that cannot be said to be barred by summarily disposal of the writ petition at the admission stage itself on 18.4.1972.

Now coming to the merits of the case, the applicant claims absorption in Delhi Administration in the Directorate of Education on the same scale of pay which she was drawing in the Model Community Centre before having been declared surplus by virtue of winding up of the earlier organisation. She has been appointed as Asst. Teacher, but, there was no scale of Rs.130-300 for that post. She has not been appointed as TGT or ^{she} Language Teacher, though L had qualifications for the same post. However, this relief was not allowed to her by the High-Court by virtue of dismissal of her writ petition at the admission stage itself. The applicant has already been working in the pay scale of Rs.130-300 and was getting at Rs.200 with effect from 1.7.1989 (Annexure A-1). The applicant continued to get that

14

scale of pay till her deployment as Asst. Teacher in the Directorate of Education. In the Directorate of Education too, she was allowed to draw the scale of pay Rs.130-300 and she was fixed at Rs.232/- per month. She was also allowed annual increments till October, 1969. It was only after the date that controversy arose about her pay scale because the pay scale of the Asst. Teacher in the Directorate of Education was not Rs.130-300 but was Rs.118-225. It is to be seen whether the applicant can carry her scale of pay with her or not. If the surplus staff is deployed on the posts carrying lower scale, the protection of the pay scale has been allowed by the Government as a matter of policy. The respondents also have mentioned the fact in her earlier representation that allowing her former scale can only be with the approval of Government of India and she cannot be granted that scale without such approval. Nobody can be made to suffer because of winding up of a particular organisation and the scale of pay of an incumbent drawing on deployment in another organisation has to be adjusted as far as possible in the same scale of pay. The other staff members Sri Om Prakash and Sri Rajeshwar Dayal have been adjusted even in higher pay scale of Rs.190-425 and one Smt. Janak Sharma who was less

qualified has been adjusted as a Language Teacher. Not giving the benefit of the protection of the pay scale to the applicant will be arbitrary, discriminatory and against the principles of natural justice. The applicant has been denied the protection of pay scale without any basis nor anything has been pointed out in the reply filed by the respondents as to why she could not have been adjusted in the equivalent pay scale or why her pay scale was not protected. Infact by deployment, she has been down graded in a lower scale of Rs.118-225. While other members of the staff were given due protection of the pay scale by adjusting them in the equivalent scale of pay in the Directorate of Education.

In view of the facts and circumstances, it is evident that re-deployed staff can be granted higher pay scale where the placement of a surplus staff in the matching scale is not possible and the individual is re-deployed against the post carrying on the pay scale lower than that of a government servant, is allowed the facility of drawing pay in the previous scale while working on the new post. For this, it is not necessary to create new post in the higher scale of pay caused by the redeployed employees in the recipient organisation, but the individual is allowed to carry on her higher pay

scale of pay plus personal pay on the re-deployment.

The respondents in the impugned order while protecting the pay of the applicant, but, that has put her to a monetary loss for all times to come and that is as stated above discriminatory and arbitrary.

In view of the facts and circumstances, the application is allowed and the respondents have directed to allow the applicant to carry her scale of pay Rs.130-300 at the time of her re-deployment in the Directorate of Education with effect from 28.12.1964 and her pay should be fixed at the same stage as she was drawing in her earlier organisation i.e. Model Community Centre. The respondents are directed to give all the consequential benefits to the applicant and comply with the above directions within a period of three months from the date of receipt of a copy of this judgment. In the circumstances, the parties are left with their own cost.

J. P. Sharma
(J.P. SHARMA) 4/14/92
MEMBER (A)