

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2594 OF 2004

New Delhi, this the 1st day of July, 2005

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K. NAIK, MEMBER (A)

Shri R.L. Gupta,
S/o late Shri Tulsi Ram Gupta,
R/o E-2/114, Shastri Nagar,
Delhi-110052.
(Rtd. Principal, Govt. Boys Sr. Sec. School,
Ram Pura, Delhi, Distt. North West-B)

....Applicant.

(Applicant in person)

Versus

1. Director of Education,
Govt. of NCT of Delhi,
Old Sectt., Delhi-54.
2. Govt. of NCT of Delhi,
Through its Chief Secretary,
Delhi Sachivalaya,
Players Building,
I.P. Estate, New Delhi-110002.

....Respondents.

(By Advocate : Shri Vijay Pandita)

ORDER (ORAL)

Shri S.K. Naik, Member (A) :

Applicant - Shri R.L. Gupta is before this Tribunal for the second time. Earlier he had filed OA 3251/2002, when his representation had been pending with the respondents' department and, therefore, the Tribunal vide its order dated 13.12.2002 directed the respondents to consider the representation and pass a speaking order within a period of six months. The applicant therein had requested for stepping up of his pay to the level of his juniors from 1.1.1996 or the date as applicable in the case of his juniors, i.e., 18.1.1996 and refix his pay with consequential benefits. When the

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respondents had not complied with the orders in time, he had also filed C.P. 425/2003, which was dismissed on 30.1.2004, by holding that the respondents had since issue a detailed order on 9.1.2004.

2. The applicant, however, is aggrieved against the order dated 9.1.2004 passed by the respondents and has filed the present OA challenging the same.

3. The brief facts of the case are that the applicant while working as Vice Principal on regular basis was promoted as a Principal on ad hoc basis on 29.10.1995. The pay scale of the Vice Principal and that of the Principal were different. While the pay scale of the Vice Principal was Rs. 7500-12000/- (Revised), the scale of pay of the Principal to which he was promoted on ad hoc basis was Rs.10000-15200/- (Revised). The applicant retired on attaining the age of superannuation on 30.4.1996. Some of the applicant's colleagues, namely, S/Shri K.K. Aggarwal, B.S. Goel and Shri B.D. Sharma, who were promoted to the post of Vice Principal on regular basis, got their pay fixed at a level higher than what was given to the applicant even though he was working against a higher post of Principal. He made some representations, which culminated in rejection of his request by the respondents vide the impugned order.

4. The applicant who has appeared in person and argued his case assails the decision of the respondents primarily on two counts. His first and the main argument is that he was promoted as Principal purely on ad hoc and emergent basis. The promotion was neither on regular basis nor was it substantive, as such no lien was created on the post of Principal. He, therefore, contends that since no lien was created on the post of Principal, his lien on the post of Vice Principal was intact and surviving. He was,

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therefore, entitled to get the benefit of the post, which he held in substantive capacity and held the lien and as such like Shri K.K. Aggarwal and others, he was entitled to stepping up of pay to their level. In this regard, he has referred to the comparative table prepared by him which shows that the pay of three of his junior Vice Principals, namely, S/Shri K.K. Aggarwal, B.S. Goel and B.D. Sharma has been fixed at Rs.11750/- w.e.f. 18.1.1996 whereas his pay has been pegged at Rs.11300/- as on 18.1.1996. The applicant has submitted that much junior person Shri B.D. Sharma who became a Vice Principal on 18.1.1996 got his basic pay fixed at Rs.11750/-. His seniors S/Shri B.S. Goel and K.K. Aggarwal thereafter got their pay stepped up to the level of Rs.11750/- whereas the applicant has been denied the same benefit even though he was holding the post of the Principal. He argues that his promotion to the post of Principal was purely ad hoc and lasted merely about six months but rather than the promotion resulting in any benefit, he has been made to suffer recurring loss in his retired life as the respondents have rejected his claim of stepping up of his pay on the basis of parity with his juniors. He has, therefore, urged that respondents be directed to step up his pay to the level of juniors, i.e., to Rs.11750/- as on 18.1.1996 in the scale of pay of Rs.7500-12000/- with consequential benefits.

5. Respondents have contested the OA. Learned counsel for the respondents has contended that the stepping up of pay of an employee is regulated under FR 22 and the Govt. of India (1) decision which states:-

“The stepping up should be done with effect from the date of promotion or appointment of the junior official and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officials should belong to the same cadre and posts to which they have

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been promoted or appointed should be identical and in the same cadre.

- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) The anomaly should be directed as result of application of FR 22 (I) (a) (1). For example, if even in the lower post the junior official draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, etc., the above provision will not be invoked to step up the pay of the senior official."

Learned counsel has submitted that in the case in hand the applicant was promoted even though on ad hoc basis to the cadre of Principal in the revised pay scale of Rs.10000-15200/- whereas he is trying to establish his claim on the basis of stepping up of pay given to his erstwhile juniors, who were working as Vice Principals, much after he had already availed the opportunity of getting promoted to the post of Principal in a higher pay scale. Thus, he does not fulfill the condition (a) above. Further his scale of pay as Principal was Rs.10000-15200/- which is totally different than that of Vice Principal i.e. Rs.7500-12000/-. Thus, condition (b), as mentioned above, also is not fulfilled. The counsel, therefore, contends that the claim for stepping up of his pay to the level of his juniors in a different cadre is not legally sustainable.

6. Counsel has further referred to the Full Bench judgment of Central Administrative Tribunal in the case of B.K. Somayajulu and Ors. Vs. The Telecom Commission and Ors., reported in 1997 (1) A.T.J. 1, decided on 20.11.1996 in which, inter alia, it has been held that :

- “(A) Pay – Stepping up of – Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that.

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- (B) Pay – Stepping up of – A claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.
- (C) Pay – Stepping up of – Every claim must be based on an enforceable legal right – A right arises by conferment and not by comparison.
- (D) Pay – Stepping up of – Held a jurisdiction in equity does not inhere in the Tribunal.”

He has further referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India and another Vs. R. Swaminathan and others**, reported in (1997) 7 SCC 690, in which in a case pertaining to the Department of P & T and Telecommunications, where the juniors had officiated in promotional posts on account of their local ad hoc promotion while their seniors did not have the opportunity to so officiate before their regular promotion, it was held that by operation of proviso to FR 22, juniors were rightly given higher pay than their seniors. The Apex Court in that judgment has held that it was not an anomaly recognized by Government of India orders. Contending that when the Apex Court held that even when the juniors had officiated in the same promotional post to which the seniors got an opportunity later and held that it constituted no anomaly, the case of the applicant is to be rejected out right since the applicant herein had been promoted on ad hoc basis to a different category, i.e., to the post of Principal whereas he is claiming parity on the basis of stepping up of pay granted to Vice Principals.

7. Learned counsel has also contended that the OA is time barred and has referred to the judgement of the Hon'ble Supreme Court in the case of **Govt. of W.B. Vs. Tarun K. Roy and others**, reported in (2004) 1 SCC 347.

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8. We have heard the applicant, who has appeared in person, and also the counsel of the respondents carefully. We have also perused the records of the case.

9. The applicant is aggrieved on the count that his promotion to the post of Principal was purely a temporary arrangement and was done on ad hoc basis. Since he maintained his lien in his substantive post of Vice Principal and his juniors, who continued to work as Vice Principals, were given the stepping up of pay under FR 22 (I) (a) (1), he should not be made to suffer on account of having accepted the ad hoc promotion to the post of Principal. He feels that his pay should have been stepped up along with the benefit of the post of Principal. However, we find that the matter concerning anomaly in pay scale and stepping up of pay has been extensively dealt with in various disputes and the Full Bench judgment of this Tribunal (supra), has clearly opined that such claims must be based on the enforceable legal right and such right arises by conferment and not by comparison. It has also been held therein that "Broad notions of equity cannot be equated or assimilated to legal rights." The rule that governs the stepping up of pay is FR 22 (I) (a) (1). We have already extracted the same above.

10. This being the basis of legal right on which the claim has to be tested, we find that the difference in pay of the applicant vis-à-vis his erstwhile juniors is there but they do not belong to the same category or cadre to which the applicant belonged. While the applicant has been promoted even though on ad hoc basis to the category of Principal, the comparison is being drawn with his erstwhile juniors, who are Vice

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Principals. Further having taken advantage of higher pay scale i.e. of Principal, the applicant cannot now claim the benefit of the lower post.

11. We find that the Govt. of India's OM dated 4.11.1993 in fact goes to the extent of clarifying that "The increased pay drawn by a junior either due to ad hoc officiating/ regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term." Herein we find that the juniors have not even been promoted either on ad hoc or officiating basis but on the contrary the applicant has been promoted to a higher post with a different higher pay scale and is now claiming parity with his juniors. Whatever be the reasons for the juniors receiving a higher amount as a result of stepping up of pay, the applicant cannot claim parity with them since he had opted to accept the ad hoc promotion to the post of Principal in a higher scale of pay.

12. It has to be appreciated that pay does not depend upon seniority alone nor seniority is alone the criterion for stepping up the pay and in this case, the seniority of the applicant has to be considered among the Principals to which he has been appointed and not with the Vice Principals. Thus, we find that the claim of the applicant is misconceived and not legally sustainable and the respondents have, therefore, rightly regretted. The OA accordingly is dismissed being bereft of merit. No costs.


(S.K. NAIK)
MEMBER (A)


(V.S. AGGARWAL)
CHAIRMAN

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