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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A.No.1445/2004
with
O.A.No.1448/2004**

**Hon'ble Shri Justice B. Panigrahi, Chairman
Hon'ble Smt. Chitra Chopra, Member (A)**

New Delhi, this the 29th day of September, 2006

O.A.No.1445/2004:

Sh. K. L. Gauba
S/o Late Sh. Khem Chand
R/o H.P.-138, Pitampura
Delhi – 110 034. ... Applicant

(By Applicant in person)

O.A.No.1448/2004:

Sh. A.L. Gogna
S/o Late Sh. M.R. Gogna
R/o 52, Shastri Park
Gali No.3, Chander Nagar Road
Delhi – 110 051. ... Applicant

(By Applicant in person)

Vs.

1. Union of India through
Secretary, Ministry of HRD
Union of India
Shastri Bhawan
New Delhi – 110 001.

2. Chief Secretary
Govt. of NCT of Delhi
Players Building
ITO
New Delhi.

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3. The Director and Principal Secretary
Directorate of Technical Education
Government of NCT of Delhi
Muni Maya Ram Marg
Pitampura
Delhi – 110 088.

4. The Principal
PUSA Polytechnic
PUSA, New Delhi – 110 012. Respondents
In both the OAs

(By Advocate: Sh. M.K. Gaur, proxy for Sh. Rajeev Bansal for R-1 and Ms. Bimla Devi proxy for Sh. Ajesh Luthra, for Respondents No.2 to 4).

ORDER

By Justice B. Panigrahi, Chairman

Since in both the OAs, there being common question of fact and law involved, therefore, they were heard together and are disposed of hereunder:

2. This is a third round of litigation between the parties more or less on the same issue.

3. In these cases, the applicants have challenged the legality, propriety and validity of the impugned order dated 6/12.4.2004 whereby and whereunder the representations purportedly submitted by them had been rejected.

4. The skeletal picture of the case of both the applicants is as follows:

4(a) The applicants had been employed under the respondents as Work Shop Instructors on regular basis in the year 1963. In the year 1992, the seniority list was prepared for the post of Workshop Instructor wherein the applicants were shown senior to Sh. Swaran Singh and Sh. V. Swaminathan. Sh. Swaran Singh was placed at Sl. No.27 and Sh. V. Swaminathan was placed at Sl. No.28 whereas the applicants, namely, Sh. K.L.Gauba and Sh. A.L.Gogna were kept at Sl. No.13 and 20 respectively in the aforesaid seniority list. Thus, Sh. Swaran Singh and Sh. V. Swaminathan both were junior to the applicants.



Since the juniors had been granted the senior scale and other benefits, whereas the applicants were denied the same, therefore, they submitted a representation before the authorities. However, the respondents slept over the matter without taking any decision on it. Therefore, the applicants had filed OAs before this Tribunal, being OA No.1549/1999 and 1590/1999 for stepping up their salary at par with those junior persons, namely, Shri Swaran Singh and Shri V. Swaminathan.

5. It appears that one Sh. B.R.Dhiman had also filed similar case and upon directions given by the Tribunal, his scale of pay was stepped up at par with the salary of Shri Swaran Singh and Shri V. Swaminathan. But unfortunately, the respondents have illegally and improperly turned down the applicants' prayer for stepping up of their pay at par with the juniors S/Shri Swaran Singh and V. Swaminathan on 18.7.2000. Therefore, the applicants filed another OA No.137/2001 challenging the action of the respondents but the Tribunal was inclined to dispose of the OA vide order dated 3.5.2002 with directions to examine the merits of the representation and dispose of the same by a detailed, speaking and reasoned order in accordance with the Rules, within three months. The applicants being aggrieved by the Judgment passed by the Tribunal filed a Review Application being RA No.162/2002 in OA 137/2001. The Tribunal vide order dated 25.6.2003, dismissed the RA. Thereafter, the applicants filed another representation which too was rejected by the respondents. Therefore, being aggrieved by and affected with the order of rejection, they have filed the present cases, wherein they have prayed for quashing and/or setting aside the order dated 6/12.4.2004 passed by the respondents. They have further prayed to grant the selection scale with effect from 07.03.1974 at par with their juniors

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S/Shri Swaran Singh and V. Swaminathan or in the alternative, step up their pay from the aforesaid date as was already granted in the case of Sh. B.R.Dhiman.

6. Respondents No.2 to 4 have filed a detailed reply controverting the aforesaid allegations of the applicants. They have stated that the attempt of the applicants to seek stepping up of their scale of pay at par with the other employees who had got selection grade, is legally untenable and factually incorrect. Some selection grade posts were sanctioned by the Government of India, Ministry of Education for staff working in certain technical posts such as Workshops Instructor, Instrument, Repairers, Mechanics, Skilled workers, Electricians etc. which carried similar type of duties and pay scales. A joint seniority list of staff working on those posts was prepared exclusively for the purpose of grant of selection grade. The selection grade was granted on the basis of seniority to the extent of 20% of the total posts of the above categories. Since the applicants could not come within the zone of consideration, due to limited quota of posts on the basis of their seniority, they were not granted selection grade. Seniority list of 12.2.1992 was final only for the purpose of Workshop Instructor working in polytechnics. The applicants are making a comparison with those who got selection grade. As some selection grade posts had been sanctioned by Govt. of India, Ministry of Education for staff working on certain technical posts, thus, the respondents had prepared a joint seniority list for a limited purpose of granting selection grade. Selection grade was granted on the basis of seniority to the extent of 20% of the total posts of above categories. In the combined seniority list, the applicants have been shown junior to Sh. Swaran Singh and Sh. V. Swaminathan. Therefore, they cannot claim higher pay scale at par with S/Sh. Swaran Singh and V. Swaminathan.

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7. Both the applicants were present and they submitted that since both the above mentioned persons were junior as Workshop Instructors and were granted the selection grade, therefore, their scale of pay should be fixed at par with the above mentioned two juniors. They referred to letter dated 10.11.1995 (Annexure-A4) and contended that there could be no hindrance or obstacle in granting selection grade scale to them at par with S/Sh. Swaran Singh and V. Swaminathan.

8. Upon hearing the applicants, who appeared in person, and the learned counsel appeared for respondents and on perusal of the grounds taken by the applicants and the stand taken by the respondents, it seems that applicants had earlier filed cases being OA 1590/99 and OA 1549/1999. Pursuant to the orders passed by the Principal Bench dated 19.4.2000, the matter was examined at length by the respondent authorities on 18.7.2000 and they stated as follows:

"The representationists also raised the question of granting seniority to S/Sh. Swaran Singh and V. Swaminathan and others on the plea that these Instructors were initially appointed under Accelerated Training Programme but were subsequently absorbed in Polytechnics. This issue was raised by one Sh. Labh Singh Chaudhary, Workshop Instructor in High Court vide Writ Petition No.2034/1983 and Hon'ble Court had up held the seniority list prepared by the Department in which S/Sh. A.L. Gogna and K.L. Gauba were junior to S/Sh. Swaran Singh and V. Swaminathan..

Since higher pay was being received by S/Sh. Swaran Singh and V. Swaminathan on account of grant of Selection Grade on the basis of combined seniority list drawn in 1983 for the limited purpose of grant of Selection Grade and these Instructors were senior to S/Sh A.L. Gogna and K.L. Gauba their request for stepping up of pay cannot be acceded to."

9. Not being satisfied with the order passed by the respondents, they once again filed a case being OA No.137/2001 wherein the Tribunal accepted the seniority position of employees in the selection grade in which S/Shri Swaran

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Singh and V. Swaminathan ranked senior to the applicants. At Paragraph 8 of the order, it is stated as follows:

"8. Relying upon the aforesaid order dated 5.9.94 respondents state in their reply that applicants are not entitled to selection grade on par with S/Shri Swaran Singh and V. Swaminathan in view of their respectively low seniority position. In this connection it is pointed out that the seniority list referred to and circulated vide letter dated 12.2.92 on which applicants based their claim is the seniority list of Workshop Instructors/Instrument Repairers only, and it has no relevance with the present matter as applicants are comparing their pay with those who get selection grade on the basis of the combined seniority list prepared exclusively for the purpose of grant of selection grade and which included other cadres also such as Electronics, Mechanics etc. who had been clubbed together for grant of selection grade."

10. In view of the aforesaid observation of this Bench in earlier proceedings, we do not find that there is any merit in these applications. The applicants' stand that they were senior to S/Shri Swaran Singh and V. Swaminathan has been already modified by another combined seniority list in which they were shown junior to S/Shri Swaran Singh and V. Swaminathan. Therefore, the Tribunal held that it was a stale issue and did not interfere in the matter. However, it gave liberty to the applicants to submit a representation. Since this time also, the respondents have, after examining the merits of the case, opined that the applicants were junior to S/Shri Swaran Singh and V. Swaminathan, therefore, their claim is legally untenable.

11. In the aforesaid background of the case, we are of the view that the applications do not merit any consideration. Accordingly, both the Original Applications are dismissed.


(SMT. CHITRA CHOPRA)
Member (A)


(B. PANIGRAHI)
Chairman

/Rao/