

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-460/92
with
OA-832/92

New Delhi this the 21st day of April, 1999.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P.Biswas, Member(A)

OA-460/92

Mrs. Lalita Kumar,
W/o Mr. Ashok Kumar,
R/o 50-A, Radhey Shyam Park,
Parwana Road,
Delhi-51. Applicant

(through Sh. B.B. Raval, advocate)

versus

1. Lt. Governor of Delhi,
Raj Niwas
Delhi.
2. Director Technical Education,
Rouse Avenue, New Delhi.
3. Principal, Women's Polytechnic,
Maharani Bagh, New Delhi. Respondents

(through Shri Raj Singh - Not present)

OA-832/92

Mrs. Usha Anand,
W/o Sh. S.C. Anand,
R/o 11, Staff Qrs. Women's
Polytechnic Maharani Bagh,
New Delhi-65. Applicant

(through Sh. B.B. Raval, advocate)

versus

1. Lt. Governor of Delhi,
Raj Niwas
Delhi.
2. Director Technical Education,
Rouse Avenue, New Delhi.
3. Principal, Women's Polytechnic,
Maharani Bagh, New Delhi. Respondents

(through Shri Raj Singh - Not present)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

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Since both the OAs have common background facts, raise same legal issues and contain claims for identical reliefs, they are being disposed of by this common order.

2. Both the applicants in these two OAs are highly aggrieved by non payment of arrears of pay and allowances pursuant to orders of promotion in upgraded posts issued in favour of them.

3. Before we bring out the legal issues to be determined herein, it would be apposite to elaborate, in brief, the factual details of these cases for better appreciation.

OA OA-460/22

The applicant in this O.A. was initially appointed as Skilled Assistant in the scale of Rs.290-500 (revised) w.e.f.1.1.73 after having gone through the necessary selection process and was appointed on temporary basis vide orders dated 2.12.75. The said order was issued by Principal, Women's Polytechnic/Maharani Bagh/New Delhi (Respondent No.3). Consequent upon the adoption of the Scheme of reorganisation by the Government of India as a result of Luthra Committee Report, the Directorate of Technical Education, on the basis of the recommendations of the Departmental Promotion Committee (DPC for short), conveyed its approval vide Annexure-A order dated

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26.12.88 for upgradation and appointment of both the applicants against newly created/upgraded posts. Relevant portions of the said order are indicated below:-

S.No.	Name and Designation on initial appointment	Name of the post on which upgraded	Date of upgradation	Pay Scale
1.	Smt. Sushma Khurana Instructor (Scale 550-900)	Junior Lecturer (Electronics and Electrical Communication Engineering)	4.6.77	Rs.650-960
2.	Smt. Usha Anand Instructor (Scale 500-900)	Junior Lecturer (Electronics and Electrical Communication Engineering)	4.6.77	Rs.650-960
3.	Smt. Lalita Kumar Skilled Asstt. (Scale 290-500)	Studio Asstt. (Medical Laboratory Technology)	11.6.79	Rs.550-900

Sl. No. 3 aforesaid relates to orders of upgradation in respect of the applicant in OA-460/92. The order also stipulated that the salary of the applicant in this OA will be drawn against the post of Demonstrator/Electronics.

4. This order of 26.12.88 was subsequently modified by Directorate's letter dated 28.3.89 (Annexure IX) indicating that the salary of the applicant would be drawn against the post indicated as hereunder:-

- i) 11.6.79 to 12.7.88 Against post of Demonstrator
- ii) After 12.7.88 Against post of Lady Lecturer created consequent upon implementation of Madan Committee's recommendations

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5. The applicant subsequently submitted details of her experiences and qualifications vide her representation dated 2.8.89. Based on that the Directorate of Technical Education issued a Corrigendum dated 6.9.89 (Annexure XII), in partial modification of its earlier order dated 26.12.88 indicating in the said corrigendum that the date of upgradation of the applicant as Studio Assistant will be w.e.f. 4.6.77 instead of 11.6.79. The order dated 6.9.89 also stipulated that the name of the post against which the applicant is upgraded may be read as Laboratory Technician (M.L.T.) instead of Studio Assistant (M.L.T.).

6. The applicant continued working as ordered. Consequent upon the aforementioned orders of upgradation & appointment, Principal Women's Polytechnic (R.No.3) issued the following orders regarding the fixation of pay in the upgraded scales besides certifying that the upgraded post carried higher duties and responsibilities as compared to the Skilled Assistant.

Order dated	Date from which pay fixed	Pay fixed in scale of	Period
7.6.90	4.6.77	550-990 1640-2900	4.6.77 to 1.6.85 1.1.86

At each stage of her career, the applicant was formally considered and allowed to cross the efficiency bar on due dates pursuant to recommendations of duly

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constituted DPC. Bills of arrears of pay and allowances duly prepared by Polytechnic Authorities (A-XVI Colly. pages 43-60 of the paperbook) and approved by Drawing & Disbursing Officer (DDO for short) were forwarded to Competent Authorities in time. The total amount of arrears, based on due and drawn statement as at Annexure XVI from May 1978 to January 1992, come to more than a lakh of rupees. In an attempt to get an early settlement of outstanding arrears the applicant continued representing her case to the appropriate authorities on several occasions as per annexures XXI(a), XXI(b), XXI(c) and XXII dated 12.12.89, 11.4.90, 21/3/91 & 16.8.91, respectively. All these without any positive result, the applicant contended.

OA-832/92

7. The applicant in this O.A. was initially appointed as an Instructor vide orders dated 10.7.85 in grade Rs.550-900 (Revised) and was placed on probation for a period of one year. The applicant claims to have experiences of about 7 years in teaching profession at different places and appears to have earned laurels at National level in recognition of her outstanding work in the teaching profession. Like the applicant in OA-460/92, the applicant in this O.A. also received the approval from the Director of Technical Education vide letter dated 26.12.88 conveying their approval for upgrading her post from Instructor to that of Junior Lecturer w.e.f. 4.6.77 in the higher scale of Rs.650-960. The aforesaid order also stipulated that the salary of this applicant shall be drawn against the

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vacant post of Lady Lecturer/Interior Decoration w.e.f.

4.6.75 to 10.5.83 and thereafter against the post of Junior Lecturer, Secretarial Practice/Hindi.

The entry No.2 in the table under para 4 of this order relates to upgradation details of the applicant in this OA.

8. Consequent upon the orders of upgradation/promotion, the respondent No.3 issued the orders regarding fixation of applicant's pay in the upgraded scales in the manner indicated as hereunder:-

S.No.	Orders dated	Date from which pay fixed	Pay fixed in the scale of	Period
i)	13.2.89	12.12.88	2200-4000	12.12.88 onwards
ii)	13.2.89	04.06.77 01.01.86	650-960 2000-3200	4.6.77 to 1.6.82 EB 1.1.86 to 1.4.88
iii)	07.6.90	01.06.83 01.01.86	650-960 2000-3200	1.6.83 to 1.6.88 1.1.86-1.6.88
iv)	05.9.90	04.06.77	650-960 2000-3200 2200-4000	4.6.77-1.6.85 1.1.86-1.1.88 12.11.88-1.12.89

The Respondent No.3 also certified that the upgraded post had higher duties and responsibilities. The applicant also had at each stage crossed the efficiency bar through duly constituted DPCs.

9. Both the applicants have come out with plea of being forced to face hostile discrimination for two reasons. Firstly, Smt. Sushma Khurana who was also upgraded by the same order dated 26.12.88 have been paid all the arrears way back in March 1991. Secondly, the

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other officials, even belonging to Skilled Assistant and Lecturer categories, as shown in Annexure-XVII, have been paid all the arrears.

10. Before we examine the stand of the respondents, we consider it appropriate to mention here that the respondents case continued to be represented by different legal representatives right upto the end of 1993. Thereafter, the departmental representatives including one at the level of peon appeared before us on behalf of respondents. However, Shri Rajinder Pandita, learned counsel entered appearance on behalf of respondents on 07.05.97 and wanted to file written submissions in both the OAS as well MA Nos. 729/97 & 1713/97 which was permitted. Although 7 opportunities were given to respondents to file written submissions, nothing was done till 12.12.97 when Shri Pandita withdrew himself from the cases. It was at this stage yet another learned counsel, namely, Shri Raj Singh entered appearance on 14.12.98 and after getting separate spell of several opportunities filed the written submission on 10.02.98 in OA-832/92 and that too after a cost was imposed in favour of the applicants. We are constraint to mention this since extension of time to file the counter, for times without number, only reveals a sense of lavity on the part of the officials who ordinarily ought to be considered responsible.

11. As regards the applicant in OA-460/92, respondents would submit that there was another revision of staff structure of Polytechnics that took place in 1988 based on Madan Committees recommendations.

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Following that the Director of Training and Technical Education, based on acceptance of the report by the Ministry of Human Resource Development, issued orders for creation of additional post or abolition/abeyance of existing posts vide letter dated 13.7.88. The posts of Studio Asstt. and Demonstrator against which the applicant was allowed to draw salary stood abolished w.e.f. 13.7.88. Based on this position, the Accounts Officer (Tech) made observations that "the order of promotion of Mrs. Lalita Kumar to the upgraded post of Lab Technician (MLT) Member Polytechnic/New Delhi is not in order." Keeping in view of the observations of the Finance Department the respondents felt that the payment of arrears of pay and allowances in favour of the applicant in OA-460/92 may not be made. Respondents would further contend that this applicant was never regularised as Skilled Asstt. and hence cannot have any claim for promotion or upgradation.

In respect of the applicant in OA-832/92. the respondents have submitted that the application is not maintainable as the alleged promotion from the post of Instructor to the post of Junior Lecturer was in gross violation of the rules and regulations governing the appointments. In the absence of any available post, there can be no question of promotion of the applicant to the post of Lecturer. No arrears can be paid to the applicant as there was no post of Junior Lecturer from 4.6.77 onwards. Respondents would further submit that the post of Junior Lecturer was abolished under the revised pattern of Madan Committees recommendations by Order No. F 122(13)/87 dated 13.7.88. The applicant

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was in the Electronic Department and there was only one post of Junior Lecturer in that organisation. The said post was offered to the senior colleague of the applicant, namely, Smt. S.B. Juneja. Since the post of Junior Lecturer stood abolished by order dated 13.7.88, there could be no promotion against the non-existing post. The respondents have further contended that the DPC was not apprised of all the facts and circumstances of the case. The comparison to Mrs. Sushma Khurana is irrelevant and the applicant cannot claim arrears which were given to others before irregularities in the matter of promotions came to be noticed by the respondents. Any irregularity or any procedural wrong done in some cases does not confer any right to the others. The payment of arrears in the case of Smt. Sushma Khurana could be even withdrawn.

12. We find that the stand of the respondents falls on the ground under the weight of contradictions created by them. For example, when the post of Skilled Assistant (in respect of applicant in OA-460/92) stood abolished by orders dated 24.6.77 & 13.7.88, there was no need for holding DPC on 2.12.88 to consider upgradation of the applicant to Laboratory Technician and issue a corrigendum on 6.9.89 ante-dating the upgradation to 4.6.77. Similarly, it eludes comprehension as to how the post of Instructor (for the applicant in OA-832/92) which stood abolished by order No.122/13/87 dated 13.7.88 could be upgraded by a subsequent order dated 26.12.88.

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13. In the background of facts and circumstances aforementioned, the following issue falls for determination:-

Whether employees who carry out duties and responsibilities of upgraded/higher posts, on being appointed on regular or even on ^{an} ~~ad~~ hoc basis, are entitled to the pay and allowances applicable to the higher grades/posts?

14. It is not in doubt that the applicants were promoted to the post of Laboratory Technician and Lecturer respectively as per orders issued by the competent authority as at paras 3, 4, 6 & 8 aforementioned. It is also not in dispute that the applicants have carried out the responsibilities and functions of promotional posts as duly certified by the Principal of the Polytechnic Institute as well as the concerned Drawing & Disbursing Officer. Applicants appear to have worked satisfactorily as well. The respondents have also not denied eligibility of the pay and allowances of the higher posts for the applicants. It has been only mentioned that "detail examination of the case is in progress by the department. The present OA is premature as the payments of the applicants are under consideration of the department".

15. We shall now bring out the position of Rules/law on the subject.

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(A) Provisions laid down under FR 49 sub-para (iii) will be applicable in determining the fixation of higher pay in the facts and circumstances of the present case. It mentions:

"Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post"

The respondents have not denied having taken the work of Laboratory Assistant/Demonstrator and of the Lecturer from the applicants herein. We find no justification/explanation on record to show why under the circumstances of the case procedures laid down in Rule FR 49 (iii) could not be followed.

(B) That apart, we find that the decisions in CA 1737/89 are squarely be applicable to the facts and circumstances of this case. In that CA, the apex court was examining the ratio arrived at by the New Bombay Bench of this Tribunal in OA 294/86 cited in the case of R.Srinivasan Vs. UOI & Ors. (1994) 1 ATJ Vol.16 232. In that case (OA 294/86) the applicants were shouldering higher responsibilities of officer of Grade II but denied emoluments for the said post. It was observed that inasmuch as the applicants have not given in writing that they would not claim any extra remuneration, they would be entitled to such payments as per rule. That judgement has become final since the

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appeal filed by the respondents against the same in the aforesaid OA was dismissed by the Hon'ble Supreme Court by an order dated 2.8.91.

(C) Admittedly, the applicants have looked after and carried out the responsibilities of the higher posts. Even if they were not regularly promoted to hold the charge of higher/upgraded posts, their entitlement to claim pay and allowances attendant to those higher posts cannot be denied in terms of the law laid down by the apex court in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair & Ors. (1998) 4 SCC 291. That was the case where a Primary School Teacher attached to Middle School was required to look after duties of the post of Secretary (scouts) from the day of the order. The Tribunal had rejected the claim of the higher pay. While examining that case in detail, the apex court directed the respondents to make payments to the applicant therein the difference of salary for the appropriate time scale during the period of January, 1992 to September, 1995 during which the appellant had actually worked in the higher post. The applicants case herein stand even on a better footing in the sense that they were duly promoted to the higher posts after following the required procedure for such appointments.

(D) Even if it is assumed that the applicants had worked in the higher posts purely as a temporary stop gap arrangement, the officiating payments for working on promotional posts for such a long period cannot be denied in the background of the law laid down by the Apex Court in the case of Secretary-cum-Chief

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Engineer, Chandigarh Vs. Hari Om Sharma & Ors.

(1998(2) SC SLJ 41). That was the case where the appointee was denied the salary of the higher post on the ground that he had given an undertaking not to claim the salary or other allowances attached to the higher post held by him. The respondent therein was a Junior Engineer and had been working on a stop gap arrangement in the post of Junior Engineer Grade-I for a long time. He had given an undertaking not to claim the salary of the higher post. The Apex Court held as under:-

"Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as holders available for promotion to the post of Junior Engineer-I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy."

(E) If the respondents have difficulties in the payment of arrears because of there being no such sanctioned posts available with them, the problem can be solved by resorting to creation of supernumerary posts only for the relevant periods. Such a step is permissible in terms of judicial pronouncements by the Apex Court in the case of UOI & Ors. Vs. Vilay Kumari (Miss) (1994 Supp(1) SCC 84). That was a case of Laboratory Assistant who was promoted as Junior Lecturer on ad hoc basis under the same respondents (R-3).

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We find that the rule position in para 15A and case laws as in paras 15B to E are squarely applicable to the facts and circumstances of the present case. We, however, make it clear that we have not expressed any view on the applicants allegation of discrimination because of lack of supporting details.

16. In the background of the reasons aforementioned, the OAs deserve to be allowed and we do so accordingly with the following directions:-

(a) The applicants shall be paid the arrears of pay and allowances for the periods they had worked on higher/upgraded posts alongwith an interest of 12%. The interest shall be payable 45 days after the amounts became due to them individually till the date these two OAs are filed i.e. 20.2.92 and 25.3.92 respectively.

(b) The said arrears shall be paid within a period of 4 months from the date of receipt of a certified copy of this order.

(c) If our orders aforesaid are not complied with within the time limit stipulated above, the respondents shall pay an interest of 18% on the entire amount from 21st of April 1999

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(i.e. the date of pronouncement of orders in these OAs) till the date the payment is made.

17. We find that this is eminently a fit case to order penal actions in the light of the law enunciated by Hon'ble Supreme Court in Central Cooperative Consumers Store Ltd. vs. Labour Court, H.P. Shimla and Ors. (1993(3) SCC 214), wherein legally valid claims were denied because of unreasonable and negligent attitude of respondents. The same situation prevails here. Applicants have been forced to seek redressal of their grievances by resorting to costly litigation process only because none under respondent Nos. 2 & 3 cared to examine the applicants claims in terms of rules/regulations on the subject. Accordingly, we direct respondent No.1 to identify those responsible functionaries and initiate appropriate disciplinary proceedings against them as the Public Exchequer cannot be burdened for the lapses of erring officers/officials. Respondent No.2 shall report compliance of our orders in this respect within six months from the date of receipt of this order to the Registrar of CAT/Principal Bench/ New Delhi under Section 24 of Administrative Tribunals Act 1985.

The Original Applications are disposed of in terms of orders in paras 16 & 17 aforesaid.

(S.P. Biswas)
Member (A)

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(T.N. Bhat)
Member (J)