

6

Central Administrative Tribunal
Principal Bench, New Delhi.

O. A. No. 1737/93

New Delhi this the 5th Day of April, 1994.

Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Smt. Kamla Devi Aggarwal,
W/e Sh. Ravi Aggarwal,
R/o A-407, Gali No.1,
Ganesh Nagar-II,
Delhi-110092.

Applicant

(By advocate Sh. D.C. Vohra)

versus

1. The Govt. of the National
Capital Territory of Delhi
(Delhi Administration)
through the Director(Education)
Old Secretariat,
Delhi-54.

2. The Govt. Girls Sr. Sec. School No.1,
through its Principal,
Shakarpur,
Delhi-92.

Respondents

ORDER(ORAL)

delivered by Hon'ble Mr. B.N. Dhoundiyal, Member(A)

This application has been filed by
Smt. Kamla Devi Aggarwal who is working as
Post-Graduate Teacher in the school run by
Delhi Administration. She is aggrieved that
her past service in New Delhi Municipal Committee
has not been taken into account for purpose of
fixation of her pay and her representation has
been rejected by the impugned order dated 10.5.93.

The admitted facts of the case are these.
Smt. Kamla Devi Aggarwal was working as Assistant
Teacher in N.D.M.C. before joining the Directorate
of Education, Delhi Administration. She was appointed
as Trained Graduate Teacher in the scale of Rs.440-750

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7

vide order dated 8.11.1983. In the letter offering her appointment (dated 25.10.1983) it is mentioned that 'the candidate will be allowed minimum of the scale of the post offered and will have no right to claim higher starting pay of the scale'. It is on this ground that her representation for protection of pay has been rejected.

The case was called twice; none is present on behalf of the respondents. I, therefore, proceed to decide this case on the basis of the pleadings and the submissions made by the learned counsel for the applicant. The main ground taken by the

The main ground taken by the respondents is that in the offer of appointment it was made clear that she will be allowed minimum of the scale for which she has applied. They have also contended that the case of the candidate is not covered under circular of Ministry of Human Resources & Development dated 31.5.1991 as she joined the Directorate on 24.11.83 whereas the protection of pay is effective only from 1.8.1989. The learned counsel for the applicant has drawn my attention to FR 22 which provides condonation of resignation for purposes of fresh appointment. It is clarified that where a government servant applies for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed either under FR 27 whether such benefits would be available to the N.D.M.C. employees being selected for similar jobs with the

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Directorate of Education was clarified in subsequent circulars. In the circular issued on 22.12.87 by the Ministry of Human Resource Development, it has been stated that in so far as N.D.M.C. is concerned, it is treated as Central Autonomous Body and pro-rata retirement benefits are admissible to a Central Govt. employee on absorption therein. It is on this basis that Delhi Administration may count the past service in respect of such teachers for pensionary purpose. The Further clarifications made on 7.8.1989 by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, ~~XXXXX~~ conveyed the decision of the President that 'in respect of candidates working in Public Sector Undertakings, Universities, Semi-Government Institutions or Autonomous Bodies, who are appointed as direct recruits on selection through a properly constituted agency including departmental authorities making recruitment directly, their initial pay may be fixed at a stage in the scale of pay attached to the post so that the pay and D.A., as admissible in the Government will protect the pay + D.A. already being drawn by them in their parent organisations.' These order were to take effect from 1.8.1989. These instructions were reiterated by the Ministry of Human Resource Development in their circular dated 31.5.91 which has been referred to in the impugned order dated 10.5.1993.

Considering all aspects of this case, I agree with the contention of the respondents that as the circular issued by the Ministry of Personnel, Public Grievances & Pensions became effective only on 1.8.1989, and no benefit of this circular is available to the

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9

candidate upto this period. However, as mentioned in the later clarification issued by the Ministry of Human Resource Development on 31.5.1991, the pay of ^{all} ~~directly recruits~~ had to be fixed in accordance with these provisions. The applicant also falls in this category.

I, therefore, hold that the applicant is entitled to refixation of her pay on the appointed date i.e. 1.8.1989 taking into account services rendered by her in the same grade with the N.D.M.C. She will also be entitled to payment of arrears due to refixation of her pay on this basis w.e.f. 1.8.1989. These orders shall be implemented within a period of three months from the date of communication of this order.

No costs.

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

/vv/