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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 218 of 1993

New Delhi this the 7th day of October, 1996

HON'BLE MR. T.N. BHAT, MEMBER (J)
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

1. Shri M.K. Popli
PGT Drawing Teach,
Govt. Boys Hr. Sec. School,
Sriniwas Puri,
Delhi-65.
2. Shri Munesh Kumar
PGT Drawing Teacher,
Govt. Boys Sr. Sec. School,
G-Block, Kalkaji,
New Delhi.
3. Shri Gurmej Singh
PGT Drawing Teacher,
Govt. Boys SR. SEC. School,
Phase-I, Ashok Vihar,
Delhi-52. ..Applicants

By Advocate Shri George Paracken

Versus

1. The Lt. Governsor & Administration of
Delhi,
Raj Niwas,
Delhi.
2. The Director of Estates,
Directorate of Education,
Old Secretariat,
Delhi. ..Respondents

Shri Uma Shanker, UDC on behalf of the respondents.

ORDER (ORAL)

Hon'ble Mr. T.N. Bhat, Member (J)

The applicants had joined the Education

7.10.1996

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Department of Delhi Administration and were in due course promoted as Senior Drawing Teachers. At the time of their entry into service, the applicants had the qualifications then prescribed for promotion as Post Graduate Teachers (PGT) in Drawing. The rules were, however, subsequently changed and according to the changed qualifications prescribed in those rules, the applicants became ineligible for promotion.

2. The respondents by their order dated 13.11.92, which order is impugned in this O.A., promoted those Drawing teachers who were petitioners in CWP No. 1312 of 1973 filed before the Delhi High Court and later transferred to this Tribunal, ~~into~~ to the post of Post Graduate Teachers (Drawing)/(Engg.Drawing) in the pay scale of Rs.550-900 (pre-revised) with effect from 3.1.1974 and Rs.1640-2900 with effect from 1.1.1986. Some of the teachers so promoted being junior to the applicants, the applicants have filed this O.A. assailing the action of the respondents in not considering the applicants for promotion.

3. The applicants rely on judgment/order of this Tribunal dated 23.2.1987 in T-75/1985 (CWP No.1312 of 1973) titled 'Shri Thakur Das Sapra & Others Vs. Lt. Governor (Administrator),

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Union Territory of Delhi and Others, in which it was held that although the competent authority can amend the rules but the amendments cannot in all cases be made retrospective in operation .

4. The applicants have sought the following reliefs in para 8 of the O.A.:-

(i) Quash the order dated 13.11.1992 where the respondents have promoted the persons who were junior to the petitioners without considering the petitioners who were senior.

(ii) Grant of order that the applicants are entitled for grant of PGT scale w.e.f. 1.10.1973 or the date from which their juniors have been promoted as PGT, i.e., 3.1.1974.

(iii) Grant of order to the respondent directing them to grant PGT grade and PGT pay scale w.e.f. 1.10.1973 or the date from which their juniors have been promoted and to grant them all consequential benefits including arrears of pay and seniority as given in various judgments.

(iv) Grant of the benefit of judgment given in the petitions filed by similarly placed colleagues of the petitioners.

(v) Pass any such order which this Hon'ble Court deems fit and necessary in the facts and circumstances of the case.

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(vi) Grant the cost of this application to the applicants.

However, at the time of hearing on admission, this Tribunal in its order dated 15.4.1993 observed that the relief Nos. (ii) and (iii) would be barred by limitation. Accordingly, the O.A. was admitted in respect of items other than (ii) and (iii) above.

5. The respondents have contested the O.A. by filing their reply. In the reply, the O.A. has been contested mainly on the ground that according to the rules in force at the time when the promotions were ordered, the applicants were not found eligible as they did not possess the requisite qualifications.

6. We have heard the learned counsel for the applicants and the departmental representative.

7. A question identical to the question involved in this O.A. also arose in Shri Thakur Das Sapra Vs. Lt. Governor (Supra) and, as already indicated, in the judgment, ^{it was} held that amendment to the rules prescribing higher qualifications than were required earlier, cannot be given retrospective operation. In that case as well, the petitioners had been denied promotion on the ground that according to the qualifications prescribed in the revised rules, those petitioners were not eligible. Referring

by order

to some earlier judgments of the Delhi High Court, the Tribunal held in the judgment that it would be fair and just that all those Drawing teachers should be treated equally and the Delhi Administration should not be allowed to discriminate against those teachers, who although having the requisite qualifications prescribed by the earlier rules, were held to be not eligible on account of the amendment in the rules. The following orders were passed by the Tribunal in the aforesaid case:-

"that the petitioners cannot insist that they have a right to teach any particular class though they may have a justified grievance if their pay and allowances are affected because of retrospective amendment of the recruitment rules. The pay scale of teachers in the common cadre of Senior Grade teachers cannot be different and if higher scale is given to teachers in the Senior Grade would be entitled to the higher scale of pay".

It was further held that the benefit of the judgment in CWP No. 1479 of 1973 - M.L. Sharma's ~~case~~ should also be given to all similarly placed teachers even if they were not eligible under the revised rules.

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8. We are convinced that the applicants are also entitled to get the benefit of the judgment of the Tribunal in the aforesaid case as also the judgment of the Delhi High Court in M.L. Sharma's case (Supra).

9. The only question that remains to be adjudicated upon is as to from what date the applicants should be granted the consequential benefits. As already mentioned, in the order dated 15.4.1993, this Tribunal had specifically mentioned that so far as the reliefs claimed in item Nos. (ii) and (iii) of para 8 of the O.A. are concerned, the same are barred by limitation and the O.A. could not be admitted in respect of those reliefs. In this view of the matter, the consequential benefits to be granted to the applicants will have to be restricted to a date one year prior to the filing of this O.A. so far as the question of payment of arrears is concerned.

10. In the event, this O.A. is allowed with the following directions to the respondents:-

(i) The respondents shall give the benefit of the judgment in CWP No.1312 of 1973 (T-75/1985) to the applicants in this O.A. as well and shall give them promotion on notional basis from the dates persons junior to them were promoted in the year 1973-74, i.e., 3.1.174, but the actual payment of arrears shall be made from the date

Signature

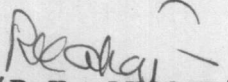
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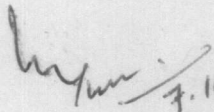
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one year prior to the filing of the O.A., i.e.,
14.1.1993.

(ii) This order and judgment shall be implemented
within a period of 2 months from the date of receipt
of a copy of this order.

There shall be no order as to costs.


(R.K. AHOOJA)
MEMBER (A)

 7.10.1996.
(T.N. BHAT)
MEMBER (J)

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