

Central Administrative Tribunal
Principal Bench

O.A. 534/93

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New Delhi this the 20th day of April, 1999

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

1. Shri Hans Raj Gulati
S/o Shri Hari Chand Gulati.
R/o 99, South Amarkali.
Delhi-51.
2. Shri K.C. Sharma
S/o Shri Ram Singh.
R/o 275, S.S. Road, Loni Town.
Distt. Ghaziabad (UP).
3. Shri Mohan Lal.
S/o Shri Shiv Kumar.
R/o H-24, West Jyoti Nagar.
Loni Road.
Delhi-94.
4. Shri Y.K. Aggarwal.
S/o Shri R.K. Aggarwal.
F-5/18, Krishna Nagar.
Delhi-51.
5. Shri Bhagwan.
S/o late Shri Rai Singh.
102-A, Nagloai Extension No. 2.
Delhi-41.
6. Shri S.P. Handa.
S/o late Shri D.D. Handa.
R/o 110/1-D, Ward No. 11.
West Azad Nagar.
Delhi-51.
7. Shri Ramesh Kumar Thakur.
S/o Shri K.K. Thakur.
1645, Rani Bagh.
Delhi-34

By Advocate Shri V.K. Rao.

Versus

1. Delhi Administration,
through its Chief Secretary,
5, Sham Nath Marg.
Delhi-54.
2. The Director of Education,
Delhi Administration,
Old Secretariat, Delhi.

Shri Uma Shankar, UDC, Departmental representative, was
present.

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O R D E R (Oral)

Hon'ble Shri S. R. Adige, Vice Chairman(A).

Applicants impugn respondents' order dated 7.12.1992 (Annexure A-5) and seek a direction to respondents to create supernumerary posts of PGTs (Commerce) for applicants w.e.f. 7.1.1992 on the same basis as have been created for other persons who are junior to them, pursuant to the Hon'ble Supreme Court's verdict in SLP (Civil) No. 15525/88 Daya Shankar & others vs. Delhi Administration (Annexure-A-1).

2. We have heard applicants' counsel Shri V.K. Rao. The departmental representative Shri Uma Shankar, UDC, was present on behalf of respondents. He stated that respondents' counsel Shri Raj Singh was unwell and sought an adjournment. However, as this is a part heard case and relates back to 1993 and we had heard respondents' counsel Shri Raj Singh on an earlier date, we thought it proper to proceed with the case and dispose it of after hearing applicants' counsel Shri V.K. Rao and the departmental representative Shri Uma Shankar, and perusing the materials on record.

3. A perusal of the Hon'ble Supreme Court's order in Daya Shankar's case (*supra*) reveals that an affidavit had been filed before the Court by the appellants stating that the total number of TGTs (Commerce) in employment in Delhi Administration were twenty four. The counsel appearing for the Delhi Administration had stated before the Hon'ble Supreme Court

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that he was not sure about the number and it may be that there were more persons of the same category as the appellants. However, in view of the fact that there was no challenge to that fact by filing an affidavit in opposition, the Hon'ble Supreme Court took it that the total number in that category was twenty four, and twelve of them were in appeal before them. Accordingly, the Hon'ble Supreme Court held that the claim of the appellants could be met by allowing supernumerary posts to the extent required to be created and directed as follows:

Twelve such posts will have to be created and since it is maintained that twelve others who have not joined the litigation are similarly placed, it will be for the Delhi Administration to create another twelve posts but these will be supernumerary and unless by satisfying the requirements of the Rules these twelve or the other group of twelve are entitled to promotion under the Rules, they would continue to be holding ex-cadre posts in the supernumerary post or posts which each of the appellants or the others shall hold will lapse and in the event of non-regularisation, they would continue to hold the such ex-cadre posts till superannuation. The supernumerary posts shall be of post Graduate Teachers (Commerce) and shall be created within three months from now.

Appeal is allowed. No costs.

4. Pursuant to the aforesaid order, respondents (Delhi Administration) issued their order dated 28.4.1992 (Annexure A-3) which refers to the twenty one supernumerary posts of PGT (Commerce) created by respondents' order dated 17.2.1992 and on the basis of the DPC's recommendations dated 8.4.92, promoted 20 TGTs (Commerce) against those ex-cadre supernumerary posts w.e.f. 7.1.1992 on adhoc basis till they superannuate.

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5. The applicants in the present O.A. pray for similar consideration and inter alia contend that they are senior to persons mentioned at Serial Nos. 15, 16 and 20 in the aforesaid order dated 28.4.1992. They urge that as they are identically situated as those persons they are also entitled to similar treatment. In this connection, Shri Rao has stated that applicants had also filed an intervention application before the Hon'ble Supreme Court in Daya Shankar's case (*supra*) which by order dated 22.2.1993 (Annexure A-7) was subsequently dismissed as withdrawn with liberty given to them to take any other remedy if so advised, and it is pursuant to that order that they have filed the present O.A.

6. Pursuant to our order dated 15.3.1999, Shri M.C. Mathur, Joint Director of Education, Delhi Administration, has filed an additional affidavit dated 16.4.1999, which is taken on record, in which it has been conceded that the person mentioned at Serial No. 20 in the order dated 28.4.1992 is junior to Applicant.

7. The main grounds taken in respondents' reply is that the supernumerary posts were created to implement the Hon'ble Supreme Court's order in Daya Shankar's case (*supra*) to which the applicants were not a party and that there are other TGTs (Commerce) who are even senior to the applicants awaiting promotion and if applicants are promoted, other senior teachers will come forward and there will be no end to it, and it will pose a huge financial burden.

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8. Respondents have not denied that the applicants are similarly placed as those mentioned in their order dated 28.4.1992 (Annexure-A-3) and treating persons similarly placed dissimilarly, is violative of Articles 14 and 16 of the Constitution, which cannot be defended in the manner the respondents have tried to do in para 8 above. In any case only the seven applicants are before us and not other TGTs (Commerce) and the OA is not barred by limitation, delay or laches.

9. In the light of the foregoing, the applicants are entitled to similar treatment as extended to the persons in respondents' order dated 28.4.1992 and, therefore, this O.A. succeeds and is allowed to the extent that the impugned order dated 7.12.1992 (Annexure A-5) is quashed and set aside. Respondents are directed to consider promoting applicants as PGT (Commerce) in the same manner as was done in regard to the persons mentioned in the aforesaid order dated 28.4.1992 in accordance with rules and instructions, with such consequential benefits as flow therefrom.

10. These directions should be implemented within three months from the date of receipt of a copy of this order. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'

S.R. Adige
(S.R. Adige)
Vice Chairman (A)