

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 3rd day of December 2003.

Original Application no. 199 of 1998.

Hon'ble Maj Gen K.K. Srivastava, Member (A)  
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Surendra Prakash Sharma, S/o Sri O.P. Sharma,  
Asstt. Teacher in Senior Secondary School,  
N.E. Rly., Gorakhpur.

... Applicant

By Adv : Sri S.S. Tripathi & Applicant (in person)

V E R S U S

1. Union of India through General Manager,  
N.E. Rly., Gorakhpur.
2. The Chief Personnel Officer, N.E. Rly.,  
Gorakhpur.
3. The Chief Public Relation Officer/Executive Officer,  
Senior Secondary School, , Principal Senior Secondary  
School, N.E. Rly., Gorakhpur.

... Respondents

By Adv : Sri P. Mathur

O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for direction to respondent no. 2 i.e. Chief Public Relation Officer (in short CPRO), N.E. Rly., Gorakhpur to protect the pay of the applicant since 1986 and also to quash the panel of 1997 in respect of Selection for promotion.

2. The facts, in short, are that the applicant was appointed as Assistant Teacher in the pay scale of Rs. 330-560 in

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N.E. Railway Inter College, Garhara. The climate of Garhara was not suiting applicant's wife and the applicant himself, he requested CPRO, N.E.Rly., Gorakhpur for his transfer to Gorakhpur. He moved another application on 28.2.1994 regarding his transfer from Garhara to Gorakhpur. At that time the applicant was in the pay scale of Rs.440-750. On the request of the applicant he was transferred by the Competent Authority vide order dated 6.8.1986 from Garhara to Gorakhpur as Assistant Teacher in the pay scale of Rs.330-560 with bottom seniority. The applicant joined at Gorakhpur on 1.9.1986. The grievance of the applicant is that his case for transfer to Gorakhpur was not considered in time by the respondents, whereas, Asstt. Teachers who joined at Garhara later than the applicant were transferred to Gorakhpur earlier on their own request. The departmental examination was held in the year 1988 and the applicant was declared successful but on account of bottom seniority he was not promoted. Another departmental examination was held in May 1997 in which due to biased attitude of the Principal, he was declared un-successful. The applicant filed a detailed representation on 3.9.1997 but his grievances were not redressed. Hence, this OA which has been contested by the respondents by filing counter affidavit.

3. We have heard applicant in person and Sri P.Mathur learned counsel for the respondents, considered their submissions and perused the record as well as written arguments filed by the parties.

4. The applicant submitted that he accepted his transfer from Garhara to Gorakhpur as Asstt. Teacher in lower scale of Rs.330-560 though at Garhara he was in the pay scale of Rs.440-750. He made several representations for



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protection of his pay but the respondents did not consider his request. The applicant has also alleged discrimination on the part of respondents by transferring two of his juniors of the same panel, namely Sri A.K. Sharma and Smt. Sudha Rani to Gorakhpur whereas the applicant's request was not considered. On perusal of record, we find that respondents addressed the applicant on 13.2.1986 (Ann 4) if he was willing for his transfer to Gorakhpur as Asstt. Teacher in the pay scale of Rs. 330-560 with bottom seniority and the applicant vide his letter dated 3.4.1986 (Ann 5) gave his willingness for posting as Asstt. Teacher in pay scale of Rs. 330-560 but with pay protection. The respondents transferred the applicant to Gorakhpur as Asstt. Teacher in pay scale without any order regarding protection of pay. Naturally since the applicant had given his request for protection of pay, he had no hesitation in joining at Gorakhpur on transfer from Garhara (Bihar) to Gorakhpur. It was incumbent upon the respondents to have apprised the applicant <sup>he</sup> whether <sup>he</sup> would be given any pay protection <sup>or not</sup> and <sup>therefore</sup> therefore when the applicant rightly represented for his pay protection the respondents could not deny the same. We are not inclined to accept the argument of learned counsel for the respondents that since the applicant joined as Asstt. Teacher in lower pay scale of Rs. 330-560, he cannot claim protection of pay as he acquiesced to the situation. Besides the respondents have not been able to establish that the applicant gave clear-cut consent for posting in lower scale with bottom seniority. In our considered opinion the applicant is entitled for pay protection from the date of his joining at Gorakhpur till he was promoted to scale of Rs. 440-750. However, we

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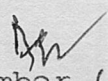
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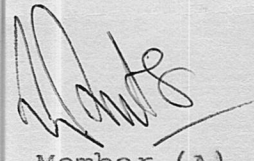
have no hesitation to hold that the applicant cannot claim seniority. Once he accepted bottom seniority, he cannot retrace the steps.

5. The applicant has also alleged mala-fide on the part of Principal and authorities. He has neither been able to substantiate <sup>his</sup> allegation nor has he impleaded any person by name as respondent. Therefore, we outrightly reject the contention of the applicant regarding mala-fide or bias against him by anyone.

6. In the facts and circumstances and aforesaid discussions OA is partly allowed. The Competent Authority in the respondent's establishment is directed to issue the order protecting the pay of the applicant which he was drawing at Garhara as personal pay w.e.f. 1.9.1986 the date on which the applicant joined at Gorakhpur and pay him the arrears alongwith interest @ 10% pa thereon, upto the date of payment. The compliance of this order shall be carried out within three months from the date of communication of this order.

7. There shall be no order as to costs.

  
Member (J)

  
Member (A)

/pc/