

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH:MUMBAI

O.A.Nos.1129/96 & 1143/96. Date of Decision: 27-9-01.

O.A.No.1129/96:

Between:

Thakorlal Shantilal Parekh,
the Head of the Chemistry Department,
& 'Lecturer in Physical Chemistry'
Government College, D A M A N. ..Applicant

a n d

1. Union of India, through the Secretary,
Ministry Home Affairs, Central Secretariat,
North Block, New Delhi.
2. The Administrator of U.T. of Daman and Diu,
Administrator's Secretariat, P.O.:
MOTI DAMAN- 396 220.
3. The Development Commissioner, & Chairman
of the D.P.C. for Class-I posts,
Secretariat, P.O.,:MOTI DAMAN-396 220.
4. J.K.Verma, Lecturer in Chemistry,
Govt. College, P.O:NANI DAMAN. ..Respondents

COUNSEL FOR THE APPLICANT : Mr.I.J.Naik

COUNSEL FOR THE RESPONDENTS : Mr.R.K.Shetty

O.A.No.1143/1996:

Between:

Ramesh Chand Agrawal, Lecturer in
Commerce (Senior Scale), Govt. College,
Daman-396210. ..Applicant

a n d

1. Union of India, through the Secretary,
Ministry of Human Resources Development,
A2/W4, Curzon Road Barracks,
New Delhi-110 001.
2. The Administrator of Daman and Diu,
Union Territory of Daman and Diu,
Secretariat, Moti Daman, Daman-396220.
3. The Secretary (Education),
Union Territory of Daman and Diu,
Secretariat, Moti Daman, Daman-396 220.

4. Shri D.C.Agrawal, Lecturer (Senior Scale),
Govt. College, Daman-396 210. . . Respondents

COUNSEL FOR THE APPLICANT : Mr.B.Dattamoorthy

COUNSEL FOR THE RESPONDENTS : Mr.R.K.Shetty

CORAM:

THE HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN

THE HON'BLE SMT.SHANTA SHAstry, MEMBER (ADMN.)

: O R D E R :

(PER HON'BLE SRI JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN)

Since identical questions of law arise in both these cases, they are disposed of by a Common Order.

2. These OAs are filed aggrieved by the DPC Proceedings dated 23.9.96 and the consequential order dated 11.10.96, changing the date of the placement of the applicants, in the Senior Scale of Rs.3000-5000/Selection grade of Rs.3700-5700/-.

3. The facts in OA.No.1143/96 are shown in detail as illustrative of the issues arising in these OAs.

4. The applicant was appointed as a Lecturer in Commerce on adhoc basis in Govt. College, Daman on 23.8.82 in the pre-revised scale of Rs.700-1600/-, subsequently revised to Rs.2000-4000/- after the IVth Central Pay Commission's recommendations. On his regular selection by UPSC, he was appointed in the said post and joined on 23.9.86, along with R-4

D.C.Agrawal, who joined on 30.3.87. Both of them acquired higher qualifications of M.Phil in 1987. The University Grants Commission introduced a Scheme of pay scales of Teachers in Universities and Colleges along with career advancement scheme with effect from 1.1.86. In the process, the existing cadre of lecturers were sub-divided into 4 separate categories with different designations and pay scales depending on length of service and qualifications. The revised pay scales were made applicable to the Union Territory of Daman and Diu by notification dated 4.1.89. Under this Scheme, lecturers with 8 years of service or 7 years for those possessing M.Phil degree were to be placed in the senior scale of 3000-5000 and lecturers with 15 years with M.Phil Degree, to be placed in selection grade of Rs.3700-5700/-. Subsequent thereto the UGC issued certain guidelines for counting of the previous service rendered in certain Colleges or Institutions outside the Union Territory in equivalent grade or scale of pay ~~as~~ the post of lecturer, in its proceedings dated 27.11.90. The applicant applied for placement in the senior scale of pay as he fulfilled the conditions as stated supra. Thereupon the Departmental Promotion Committee met on 17.2.93 and on its recommendations the Union Territory issued the orders on 22.2.93 placing the applicant in the senior scale of Rs.3000-5000 with effect from 1.12.87 along with his juniors Sri D.C.Agrawal(R-4) and another. Necessary payments were made and arrears of salary were also disbursed.

4. Thereafter he came to understand that a review DPC was proposed to be met on 21.9.95 to reconsider the placement in senior scale. Aggrieved, he made an application before this Bench of the Tribunal in O.A.No.1116/95, which stood disposed of on 14.6.96. As apprehended, a review DPC was held on 23.9.96 and orders were issued on 11.10.96 revising the date of placement of the applicant in the senior scale from 1.12.87 to 23.9.93. As a result he lost his seniority vis-a-vis his junior R-4 and also suffered loss in basic pay to the extent of Rs.400/- with allowances. This order is now impugned in this OA.

5. It is urged by the learned Counsel that when R-4, who was his junior, has been considered for placement in the senior scale with effect from 1.12.87 on the ground of his completion of the required service, taking into account his past service rendered in Colleges outside the UT Administration, the applicant should also be given the placement in the senior scale from the said date. It is contended that ~~there~~ no junior should be promoted prior to that of his senior and any deviation would be violative of Article 16 (1) of the Constitution.

6. On the foregoing factual matrix, the applicant in OA.No.1129/96, aggrieved by changing of his placement in the selection grade of Rs.3700-5700/- from 1.1.86 to 1.8.87, filed the OA seeking to quash the same impugned order dated 11.10.96.

7. The respondents in OA.No.1143/96 state that Sri D.C.Agrawal has past service from 6.11.79 to 23.2.81 as an adhoc lecturer in Upadi P.G.College, Pilibhit (UP) and from 24.2.81 to 29.3.87 as a permanent lecturer in N.M.S.N. Das P.G.College, Badaun (UP), which was required to be counted for the grant of senior scale as per Para 13 of the Career Advancement Scheme dated 22.7.88. The applicant joined the service on regular basis on 23.9.86 as lecturer in Govt.College of Daman and accordingly he was rightly placed in senior scale with effect from 23.9.93 ie., after completion of 7 years of regular service. The decision of the UGC contained in the letter dated 27.11.90 for counting of service in equivalent grade before the appointment for the purpose of selection grade or senior scale is lawful and was taken in pursuance of the policy decision. The adhoc service of the applicant prior to the actual appointment could not be taken into consideration for the purpose of past service. A review DPC was held in pursuance of the directions given by the Tribunal in the earlier O.A. filed by the applicant and hence it is not open to the applicant to challenge the DPC proceedings.

8. The respondents in OA.No.1129/96, submit that the applicant, who was having M.Phil degree, required 15 years of service for placement in the selection grade for Rs.3700-5700/- Respondent

No.4, who was having Ph.D. Degree, joined the Govt. Degree College, Daman on 1.11.73 and after counting his past service rendered as a Lecturer from 22.11.71 to 13.5.73, was given the benefit of the past service for granting the selection grade whereas the benefit of past service could not be given to the applicant as he has been working as Tutor and as per the UGC letter dated 8.10.92, such service should not be counted for Career Advancement.

10. We have given careful consideration to the arguments advanced by the learned Counsel after going through the pleadings and other material on record.

11. The Govt. of India after accepting the observations of the UGC have decided to implement a Scheme of revision of pay scales of teachers in Universities and Colleges with effect from 1.1.86.

12. In order to advance the career of the lecturer, it was decided in the above Scheme that every lecturer could be placed in the senior scale, if the total length of service exceeding 8 years but less than 16 years was put in the pay scale of Rs.3000-5000/- The lecturers with total length of service exceeding 16 years, were put in the Selection Grade of Rs.3700-5700/- and the Lecturer of total length of service exceeding 16 years with Ph.D Degree was also put in the scale of Rs.3700-5700/-. The lecturers with Ph.D. and M.Phil Degrees

are also entitled for relaxation in the qualifying service by 3 years and one year respectively. In the letter dated 27.11.90, the UGC had also decided and the Ministry of Human Resource Development had also decided to count the past service as qualifying service and placement as a senior scale/selection grade. In the notification dated 4.1.89, the Government conveyed its approval for implementation of the said Scheme in the Union Territory of Daman and Diu also.

13. It is useful for the purpose of determining this case to reproduce the letter dated 27.11.90 as under:-

"Kindly refer to Para 3 of this office letter of even number dated 29th January, 1990 containing the decision of the Commission regarding counting the experience of a person, before appointment as a lecturer in the university/college, rendered in equivalent grade in other universities/colleges and the national laboratories or R & D organisations (CSIR/ICAR, DRDO, UGC, etc.) and UGC Research Scientist, as qualifying service for placement in the senior scale/selection grade.

The Commission in consultation with Ministry of Human Resource Development (Department of Education) reconsidered the matter

resolved revised guidelines as follows for counting of previous service for purposes of senior scale/selection grade under the career advancement scheme for lecturers:-

1. Previous service without any break as a Lecturer or equivalent in a university, college, national laboratory or other scientific organisations (CSIR, ICAR, DRDO, UGC etc) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that:-

a) the post was in an equivalent grade/scale of pay as the post of a Lecturer;

b) the qualifications for the post were not lower than the qualifications prescribed by UGC for the post of Lecturer;

c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers;

d) the post was filed in accordance with the prescribed selection procedure as laid down by the university/State Government;

e) the appointment was not adhoc or in a leave vacancy of less than one year duration.

2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government) if the above criteria are satisfied.

You are requested to bring the above decision to the notice of the colleges under your jurisdiction also.

Kindly acknowledge the receipt of the letter."

14. From the above it is clear that the previous continuous service of a lecturer in the University/College, National Laboratory or other Scientific Organisation was to be counted for placement of lecturers in senior scale/selection grade. The main conditions for such counting of past service are that, (1) the earlier post was in an equivalent grade/scale of pay and (2) the qualification of such post were not lower than the qualifications prescribed by UGC in the post of lecturer. It should be noted that this OA is not under challenge in these two cases.

15. Without doing any effect to the past service, the

applicants in both the cases were given the placement in the senior scale/selection grade in the DPC held in 1993. After detecting the mistake, the respondents held the review DPC and in the impugned proceedings corrected the error and granted the placement by counting the past period of service of the applicants. The respondent no.4 was placed in the senior scale with effect from 1.12.87. As the above scheme is not under challenge, the applicant cannot make any grievance that their juniors were given higher scale from an earlier period or for the change of their placements.

17. It is also now brought to our notice that the adhoc service of the applicant in OA.No.1143/96, was also counted and the benefit of such service was given to him. The copy of the minutes of the DPC held on 17.5.2000 was also produced. In the DPC proceedings held in 1993, the period of adhoc service was not considered. The DPC, having further reviewed the case of the applicant, had counted the adhoc service also and accordingly the applicant was granted the senior scale from 23.8.89.

18. The contention of the learned Counsel advanced on the basis of the Judgement of the Hon'ble Supreme Court in Balkishan Vs. Delhi Administration and Another (1989 Supreme Court Service Law Journal 233), is that granting of senior scale to a junior prior to that of the senior is contrary to Article 16(1)

of the Constitution of India and that no junior should be confirmed or promoted without promoting the senior is wholly misconceived. The learned Counsel relies upon the observations of the Supreme Court at para 10 in the above Judgment, which are as follows:

"In service there could be only one norm for confirmation or promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from the principle will have demoralising effect in service apart from being contrary to Article 16(1) of the Constitution."

19. In the above case, the appellant was promoted from cadre to cadre, whereas his seniors were not considered for such promotion. The Hon'ble Supreme Court finding that there was no direction by the High Court of Delhi that the appellant should be ranked above those who are liable to be confirmed before him, observed as above.

20. What's the Supreme Court said was that no junior should be promoted without considering the case of his senior. Without such consideration of the senior, no junior should be considered for promotion. In the instant case, we do not find any deviation from this principle. Both the applicant as well as his junior were considered for placement in the higher scale

and as the juniors of the applicant were having a longer length of past service than the applicant, they were given higher scale from the early date.

21. The learned Counsel for the Applicant also places heavy reliance on the Judgement of the Hon'ble Supreme Court in Dr.S.M.Ilyas & Others Vs. Indian Council for Agricultural Research & Others (1993 (23) ATC 340), where the Supreme Court faulted the grant of higher scale to Scientists in ICAR on the basis of length of service as the Scientists were not inducted only on the basis of seniority and length of service but by promotion on merit-cum-seniority basis as well as direct recruitment. The higher scale based on length of service alone was held to be leading to analogous situation where junior getting higher scale, while the appellants though recruited much earlier have not become eligible to get that scale.

22. In our view, this Judgement is distinguishable on facts as the lecturers in the Colleges, who are appointed only by direct recruitment sought to be given the benefit of their past service in other equivalent Institutions.

23. Thus to see that the service rendered in equivalent post/scale in such organisations would not go unrecognised, the University had, as a matter of policy, issued the guidelines for counting the past service. We do not therefore find any disparity in the policy of the Government.

24. The Bombay Bench in OA.No.1089/96 dated 20-4-2001 in Dr. Shyam Sunder Jah Vs Union of India & Others has also considered the issues that arose in this OA and held that the impugned proceedings of the DPC were not invalid. This Judgment is therefore on all fours to the present case.

25. The contention raised in OA.No.1129/96 as to stepping up the pay on par with his juniors, is wholly misconceived. The benefit of stepping up could be granted only when as a result of fixation of pay on promotion of a junior who was drawing the identical pay in the lower grade, draws a higher pay than that of his senior. In the present case the fixation of pay on promotion is not at all involved as such the fixation of pay was not as a result of fixation under FR.22(1)(a)(i). Hence, stepping up cannot be ordered.

26. As a result, the OAs are dismissed with costs of Rs.1000/- in each case.

(SMT. SHANTA SHASTRY)

MEMBER(A)

(V. RAJAGOPALA REDDY)

VICE CHAIRMAN