

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.1089/96

this the 20th day of April, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

Dr. Shyam Sunder Jha
Lecturer (Selection Grade)
Government College,
Daman-396 210.

..Applicant

By Advocate: Applicant in person.

Versus

1. Union of India through the
Secretary,
Ministry of Human Resources Development,
A2-W4, Curzaon Road Barracks,
New Delhi-110 001.
2. The Administrator of Daman and Diu,
Union Territory of Daman and Diu,
Secretariat, Moti Daman,
Daman-396 220.
3. The Secretary (Education),
Union Territory of Daman & Diu,
Secretariat, Moti Daman,
Daman-396 220.
4. Dr. Hari Sharananand Sharma
Lecturer (Selection Grade)
Government College,
Daman-396 210.
5. Dr. Suresh Prasad Sinha
Lecturer (Selection Grade)
Govt. College, Daman-396 210.

..Respondents

By Advocate: Shri R.K. Shetty.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this case is aggrieved of an order passed by the respondents on 11.10.1996 whereby the respondents had shifted the date of placement of applicant in selection grade from 1.1.1986 to 16.12.1988.

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2. Facts in brief are that the applicant was employed as a Lecturer in the Government College, Daman after selection by the UPSC which was held on 24.9.75 and he was appointed on 26.12.75. He claims that he was placed at seniority position No.14 vide seniority list, Annexure A-2 issued on 8.11.1995. Respondents No.4 and 5 had also joined as Lecturers in the same college. Respondent No.4 joined on 2.8.76 and respondent No.5 joined on 29.7.76 and they were placed at S.Nos.15 and 16 respectively in the seniority list.

3. University Grants Commission (hereinafter referred to as UGC) introduced a scheme of revision of pay scales of teachers in universities/colleges along with career advancement scheme w.e.f. 1.1.1986 and in the guise of revision of pay scales, the UGC and Ministry of Human Resources Development (hereinafter referred to as MHRD) provided for restructuring of the cadre. The lecturers were divided into 4 categories, i.e., Lecturer with total length of service of less than 8 years were put in the pay scale of Rs.2200-4000, Lecturers with total length of service exceeding 8 years but less than 16 years were 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 Reader with total length of service exceeding 16 years with Ph.D. degree was also put in the scale of Rs.3700-5700 and the Lecturers with Ph.D. and M.Phil degrees were also entitled to relaxation in the years of qualifying service by 3 years and one year respectively. In this career advancement

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scheme, the UGC and MHRD had also decided to count the past service as qualifying service for placement in Senior Scale/ vide letter dated Selection Grade 27.11.1990. MHRD notified the scheme vide Notification dated 4.1.1989 and conveyed the approval of the Government for implementation of the said scheme in the Union Territory of Daman and Diu also.

4. The applicant further states that on learning that the past service in the equivalent grade outside the Union Territory will be counted towards qualifying service for placement in senior scale/selection grade, the applicant made a representation to the Secretary (Education), Union Territory of Daman & Diu seeking relaxation with regard to the extent of eligibility condition of number of years of qualifying service/so that he could be placed in the selection grade in the same grade on the same day along with his juniors who had become eligible on counting such past service. He has also prayed that the past service should not be counted as qualifying service for placement in the selection grade without approval of the Government of India as it would lead to anomaly of junior becoming eligible on counting such past service and the same should be referred to the MHRD for suggesting measures to protect the legitimate interest of the senior like the applicant.

5. Consequent to this scheme some 20 Lecturers were placed in the selection grade of Rs.3700-5700 on 30.8.90, but these orders were not implemented and later on two separate set of orders were issued on 4.11.1991 whereby the applicant was

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placed in the selection grade w.e.f. 16.12.1988 and were placed respondent Nos. 4 and 5 in the selection grade w.e.f. 2.8.1989 and 29.7.89. But the order contained a proviso that the placement of those lecturers in the selection grade like respondent Nos. 4 and 5 w.e.f. 1.1.1986 with benefit of seniority and promotion will be considered on receipt of clarification from the Government of India and subsequently vide another order dated 14.8.92 respondent Nos. 4 and 5 were placed in the selection grade w.e.f. 1.1.1986 which created an anomaly whereby the seniority and pay of the applicant was adversely affected. The applicant thereafter made a representation on the basis of which a review DPC was held and he was again placed in the selection grade w.e.f. 1.1.1986 on par with respondent Nos. 4 and 5. Applicant again came to know that a review DPC was being held to review the placement of the applicant in the selection grade w.e.f. 1.1.1986 and the applicant made a representation making reference to certain OMs but the respondents on the basis of a review DPC convened on 23.9.96 shifted the date of placement of the applicant in the selection grade from 1.1.1986 to 16.12.1988 which resulted in reduction of the applicant in seniority, rank and pay scale retrospectively w.e.f. 1.1.1986 vis-a-vis his juniors without giving an opportunity of being heard.

6. The applicant further pleads that in the service jurisprudence there can be only one norm for confirmation or promotion of persons belonging to the same cadre and no junior can be confirmed or promoted without considering the case of the senior.

[Signature]

7. The applicant further relies on the case of Dr.S.M. Ilyas and Others Vs. Indian Council of Agricultural Research and Others (1993) 23 ATC page 340 wherein a similar case of discrimination was taken up with the Hon'ble Supreme Court where the seniors though recruited earlier could not become eligible to get higher scale. The applicant states that 7A. As many as 27 lecturers of the Government college had been given promotion under the higher scale of pay or higher pay under the career advancement scheme and in many cases the respondents have deviated from the norms laid down by the UGC, MHRD but the administration decided to review only those cases by the DPC dated 17.12.1993 leaving other similar cases untouched.

8. The applicant further pleads that the action of the respondents to hold a review DPC to shift the date of placement of applicant in the selection grade from 1.1.1986 to 16.12.1988 is illegal, unwarranted, mala fide and the same is liable to be quashed as it amounts to reduction in pay and no opportunity for the ^{hearing} same had been given to the applicant and juniors have been granted higher pay than the applicant which is unheard of in service jurisprudence.

9. The application is being contested by the respondents. The respondents have simply pleaded that after the career advancement scheme was introduced by the UGC in consultation with the MHRD it did require that persons working in equivalent grade before joining the service under the respondents were entitled to count the period of service rendered by them in a university, college or National Laboratory etc. to that extent, the respondents have relied upon a letter dated 27.11.1990 issued by the UGC and submitted that as per

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this letter UGC in consultation with the Min. of HRD, the issue Department of Education has resolved / regarding the revised guidelines for counting of previous service for the purpose of senior scale/selection grade under the career advancement scheme for Lecturers, so the respondents pleaded that this benefit is being granted to those teachers who have rendered service in the equivalent grade and if we count the service of those lecturers then those lecturers must have joined the service earlier than that of the applicant only then they could be given selection grade for which they were duly entitled as they had already rendered service in the same grade.

The said letter is at Exhibit R-I.

10. The respondents further submitted that a period of service of 13 years is required for grant of selection grade and the applicant had completed the service of 13 years under the career advancement scheme only on 16.12.1988 as he joined the service of lecturer on 16.12.1975 and secured a Ph.D. degree on 21.5.86 though respondent Nos. 4 and 5, who the applicant alleges to be his juniors had been given selection grade w.e.f. 1.1.1986 by virtue of their past service, i.e., respondent No.4 had 7 years of service and respondent No.5 had put in 4 years of service as Lecturer in terms of the UGC circular dated 27.11.1990. Since the applicant had not been given the benefit of his past services hence his case is not ~~on~~ par with that of respondent Nos. 4 and 5 so it is pleaded that the OA is without any merits and the same is liable to be dismissed.

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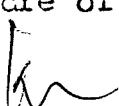
11. We have heard Shri R.K. Shetty appearing for the respondents as ~~none~~ has appeared for the applicant so we proceeded to decide the case in accordance with the Rule 15 of the CAT(Procedure) Rules. However, immediately thereafter the applicant has appeared in person and wanted to address his arguments. However, he was allowed to submit his written arguments.

12. We have gone through the arguments submitted by the applicant and have also gone through the record.

13. The applicant is trying to draw his parallels with a case of Dr. S.M. Ilyas (Supra) wherein it was held as under:-

" Pay-Revision-Discrimination - Basis of length of service for grant of higher scales (to Scientists 'S2' and 'S3' of ICAR) - Not justified where the Scientists inducted not purely on the basis of seniority and length of service but by promotion on merit-cum-seniority basis as well as by direct recruitment - Higher scale based on length of service resulting in anomalous situation where juniors getting the higher scale while the appellants, though recruited much earlier, not becoming eligible to get that scale and their future chances of promotion to higher posts also getting affected - Held, disparity arbitrary, unreasonable and unjustified - Appellants also entitled to the higher scale - Despite opportunities given to respondents no scheme suggested for granting appropriate relief to appellants - Hence directions issued to respondents so that any of appellants or the like working Scientists be not deprived of the benefit of the revised pay-scales on the higher post of S-2 or S-3, in case they were appointed by direct recruitment or by selection on merit-cum-seniority on the post of Scientists S-2 or S-3 prior to those who have now become entitled to higher pay scale under the notification by which pay scales were revised - Constitution of India, Articles 14 and 16".

14. On the strength of the above judgment, the applicant has submitted that the scheme introduced by the UGC was also not justified as the scheme also envisages counting of past service of those persons who have worked somewhere else but had been borne on the cadre of the respondents, subsequent



.8. were to the joining of the applicant and juniors to the applicant as per the seniority list. So if we allow the counting of past service then the applicant is rendered junior to the respondents No. 4 and 5 who will become senior, which amounts to discriminatory treatment to the applicant as the applicant who was initially senior to respondent Nos. 4 and 5 had been put below respondent No. 4 and 5. Thus it has also resulted in an anomalous situation where the junior has started getting senior scale while the applicant, who was recruited earlier but not being eligible to get the higher scale as he had no past service to his credit, so this affects his right adversely vis-a-vis respondent Nos. 4 and 5. As such the scheme as introduced by the UGC/MHRD should be quashed and counting of past services should not be allowed or else the relaxation be granted to the applicant and as the applicant had been granted selection grade earlier w.e.f. 1.1.1986 so to continue in he be allowed the selection grade w.e.f. 1.1.1986 so that his seniority be retained vis-a-vis respondent Nos. 4 and 5.

15. We have gone through the judgment cited by the learned counsel for the applicant and we find that the reasoning advanced by the counsel for the applicant is not in consonance with the law laid down by the Hon'ble Supreme Court in the case of Dr. S.M. Ilyas (Supra). In the case of Dr. S.M. Ilyas (Supra) the Scientists were classified as S-2 and S-3, who were inducted purely on the basis of seniority and length of service but also by promotion on merit-cum-seniority basis as well as by direct recruitment. Thus there were 2 different modes of inducting the Scientists into the category of Scientists S-2 and S-3 whereas

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the conditions for grant of pay was total length of service in the ~~UARs~~ as illustrated in the judgment. Thus a person going to a higher grade on the basis of total length of service in the ~~UARs~~ was bound to get higher pay whereas the Sceintists of other group having joined on a senior position was to get a lesser pay since he had less service in the ~~UARs~~ as on the crucial date of 31.12.1985 in that case the working of ~~that scheme~~ in fact, had created an anomalous situation. But here ~~the~~ the case in hand the career advancement scheme had suggested for grant of selection grade to those persons who had the qualified service of 13 years to their credit and for that purpose if a person ⁱⁿ equivalent had worked in some other university or science institution/grade then his service would also be counted. For this purpose, the relevant extracts of letter Exhibit R-I are reproduced for easy reference:-

" The Commission in consultation with Ministry of Human Resource Development (Department of Education) reconsidered the matter at its meeting held on 11.10.1990 and 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;

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- c) the Lecturers concerned possessed the minimum qualification prescribed by UGC for appointment as Lecturers;
- d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/ State Government;
- e) the appointment was not ad hoc or in a leave vacancy of less than one year duration.

The 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".

16. The above extracts drawn from this letter will show that the lecturers were being given the benefit of their past service subject to fulfilling the conditions mentioned in para 4(a) to (e) and if after observing these conditions a lecturer is allowed to count past services in accordance with these conditions that will only go to show that the lecturer who is being given the benefit had, in fact, joined service in some university or college department or national laboratory and was working in some equivalent grade so by virtue of his length of service, he could be said to have joined the service in fact from the date he is being allowed to count his past service. Joining of service in the Government college under the respondents was immaterial for that purpose and it can happen in so many cases that a person working in some other university college of equal status and rank in the same pay scale because of personal circumstances he may shift to join the college under the respondents then the services rendered by him in the past goes in vain if he is not given the benefit of counting of his past services so the scheme introduced by the UGC/MHRD known as career advancement

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scheme is totally at variance with the scheme which was introduced in the case of Scientists of ICAR which was the subject matter of litigation in the case of Dr. Ilyas (supra).

17. Hence we are of the considered opinion that the ruling relied upon by the applicant is of no avail.

18. We may further observe that in this case also on the representation of the applicant, his placement in the selection grade was ante-dated by the recommendations of a review DPC and the applicant was given selection grade w.e.f. 1.1.1986. But subsequently MHRD had raised an objection so on the objection of the MHRD again a review DPC was constituted and the placement of the applicant was again shifted to 16.12.1988, so we find that reshifting of the applicant's date of placement in the selection grade from 16.12.1988 is strictly in accordance with the scheme introduced by the UGC, MHRD and it does not discriminate between the applicant and the respondents because applicant's and respondent Nos. 4 and 5 are not similarly situated persons as the respondents are having to their credit the past services rendered by them in the same grade in the university or college as recognised by the scheme. As such we find that there is no discrimination also against the applicant.

19. Hence, we are of the considered opinion that the OA has no merits and the same is dismissed. No costs.

Rakesh

MRS. SHANTA SHAstry
MEMBER (A)

Kuldeep
(KULDIP SINGH)
MEMBER (J)

Rakesh