

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION No.593/2000.

Dated this Wednesday the 18th Day of June, 2003.

Coram : Hon'ble Shri V.K. Majotra, Member (A)  
Hon'ble Shri Shanker Raju, Member (J).

U.B. Solanki,  
Residing at  
Naroli Nava Falia-296235  
Via Bhilad (W.R.)  
U.T. of Dadra and Nagar Haveli. . . Applicant.  
( By Advocate Shri G.S. Walia ).

Versus

1. The Administrator,  
U.T. of Dadra and Nagar Haveli,  
Silvassa - 296 230.
2. The Asst. Director of Education  
(Adm),, Head of Office,  
Department of Education,  
Dadra Nagar Haveli,  
Silvassa - 296 230. . . Respondents.

( By Advocate Shri V.S. Masurkar ).

ORDER (ORAL)

Shri V.K. Majotra, Member (A).

Through this application, applicant has sought fixation of pay in the scale of Rs.2200-4000 (R)/8000-13500 (Vth Pay Commission) when the applicant was working as Incharge Assistant Director of Education and also in the scale of Rs.3000-4500/10000-15200 (R) when he was working as Incharge Principal Higher Secondary School. He has also claimed fixation of his pension and other retirement dues alongwith arrears as a result of fixation of pay in the said scales.

2. The applicant has stated to have retired on 31.5.2000 when he was working as I/C Principal of the

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Government Higher Secondary School Naroli. Prior to that according to the applicant he had been promoted to the post of Headmaster and was transferred to the post of Education Officer in the pay scale of Rs.2000-3500/7500-12000. He was transferred to the post of Assistant Director of Education on 16.4.1997. He was promoted to the post of Incharge Assistant Director of Education on 16.4.1999 (Exhibit A-1). He was appointed as Incharge Principal with effect from 12.5.1999 (Exhibit A-2). He continued as such till his retirement. The learned counsel stated that applicant functioned on the post of Assistant Director of Education and Principal which are in the higher pay scales than his original post of Headmaster/Education Officer, but he was neither placed in the scales of these posts nor was he given pay and allowances of these posts.

3. On the other hand learned counsel of the respondents stated that applicant was asked to b ~~never looked~~ after the charge of these posts pending regular selection as per statutory rules. He was never appointed to these posts on regular basis. As such applicant continued as Headmaster in the pay scale of Rs.2000-3500/7500-12000. The post of ADE has to be filled by promotion on selection by DPC constituted by UPSC. The post of Principal of Higher Secondary School is classified as General Central Civil Service Group A Gazetted Non Ministerial and his selection post to be filled on selection cum seniority under the proposed recruitment

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rules (Exhibit R-2). The learned counsel stated that a purely working arrangement in which the applicant held the current charge of the post of ADE / Principal does not bestow any right on applicant relating to fixation of pay in higher pay scale in the said higher posts and other consequential benefits. Learned counsel stated that applicant was his own Drawing & Disbursing Officer as Principal and he had drawn his pay in the pay scale of Rs.2200-3500 revised to Rs.7500-12500 which is <sup>is b</sup> the pay scale of the post of Headmaster (as substantive post) which cannot be agitated now.

4. Learned counsel of the applicant has relied on the following in support of applicant's claim.

- (a) 2002 Supreme Court Cases (L&S) 116 Jaswant Singh V/s. Punjab Poultry Field Staff Association and others.
- (b) P. Tulsi Das & Ors. V. Govt. of India & Ors. 2003 (1) 19.
- (c) Dwarka Prasad Tiwari Vs. M.P. State Road Transport Corporation & Another 2002 (1) 391.

In the first case although the applicant working as Chick Sexer but not possessing necessary qualifications under the earlier Rules and not holding any of the feeder posts under subsequent Rules was held not eligible for Chick Sexer nonetheless entitled to pay and allowances

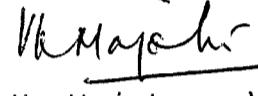
admissible to Chick Sexer. In the second case i.e. P. Tulsidas & Ors. (Supra) it was held that a person holding a lesser grade ~~was~~ made <sup>the</sup> incharge of higher post <sup>is entitled</sup> ~~and~~ <sup>b</sup> ~~also~~ pay scale <sup>b</sup> permissible for the higher ~~or~~ category of post but that will not make the said person entitled to claim to be a regular member or incumbent of the post to claim consequential benefits for any Advancement Career or Promotion as if he is regular incumbent to the said post. In the case of Dwarkaprasad Tiwari (Supra) it was held that for the periods <sup>for</sup> ~~to~~ which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid emoluments as attached to that higher post.

3. It is immaterial whether or not the applicant possesses the requisite qualification for holding the higher post of Assistant Director of Education or Principal when he had been ordered by the respondents to discharge the functions of these posts. While on the basis of respondents order requiring the applicant to function as Incharge Asstt. Director of Education/Principal, applicant may not have any right for fixation of his pay in the higher pay scales of these higher posts and consequential pension and other benefits, he is certainly entitled to pay in the scales of these higher posts on the principle of quantum merit.

The rulings cited above by the applicant are also squarely applicable to the facts of the present case.

4. Having regard to the totality of facts and circumstances, the O.A. is partly allowed directing the respondents to grant the applicant pay and allowances in the pay scales of Assistant Director of Education / Principal for the periods when he functioned as such. Consequential arrears shall also be paid by the respondents to the applicant within a period of 3 months from the date of communication of this order. No costs.

  
( Shanker Raju )  
Member (J)

  
( V.K. Majotra )  
Member (A).

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