

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. : 149/98

Smt. Kela Shankar

(by Advocate Shri P. A. Prabhakaran)

VERSUS

UOI

(by Advocate Shri V. S. Maswkar.)

CORAM : Hon'ble Shri Justice R.R.K. Trivedi- Vice Chairman
Hon'ble Shri Shankar Prasad - Member (A)

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?

(iii) Library ?

NO


(Shankar Prasad)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAT BENCH

Dated this the 17th day of July, 2003

Coram: Hon'ble Mr.Justice R.R.K.Trivedi - Vice Chairman
Hon'ble Mr.Shankar Prasad - Member (A)

O.A.179 of 1998

Smt.Leela Shankar,
R/o Room No.13, "Parmanand",
Jaihind Colony, Gupte Road,
Dombivili (West), District Thana.
(By Advocate Shri P.A.Prabhakaran) - Applicant

Versus

1. Union of India
through the Chief of Naval Staff,
Headquarters, New Delhi.
2. Flag Officer Commanding-in-Chief,
H.Q. Western Naval Command,
Shahid Bhagatsingh Road, Mumbai.
3. Commanding Officer,
INHS 'ASWTNT',
Colaba, Mumbai.
4. G. Srinivasulu,
DAS (Vizag).
5. N.C.Patnaik,
INS Chilka.
6. B.C.Chaudhary,
INS Chilka.
7. Smt.Mamta Patnaik,
INS Chilka.
8. Ganeswara Mahapatra,
INS Chilka.
9. A.N.Salgaonkar,
INS Chilka.
10. M.Ram,
INS, Shivaji.
11. Sanyasi Dakua,
INS, Hamla
12. T.R. Shukla
INS Hamla

13. K.R. Harikumar
INS Venduruthy
14. P.K. Vijayaraghavan
INS Venduruthy.
15. U.Y. Pant
INS Shivaji
16. Vijaya Kumar N.N.
INS Chilka
17. Sreedharan
INS Chilka
18. Ms. Chabi Chakraborty
INS Chilka
19. Smt. C.K. Mane,
INS Hamla
20. Smt. P.M. Vimalakumari
INS Venduruthy.
21. James Jurard P.
INS Hansa (Goa).

Addresses for serial numbers
4 to 21 being care of -
Chief of Naval Staff
Headquarters,
New Delhi.

... Respondents

(By Advocate Shri V.S. Masurkar)

O R D E R

By Hon'ble Mr. Shankar Prasad, Member (A) -

Aggrieved by the order dated 30.1.1997 (Annexure-A-14) rejecting her request for granting of higher pay scale from the date of her initial appointment and their letter dated 21.5.1997 (Annexure- A) rejecting her request for grant of seniority in Civilian Education Instructor from the date of her initial appointment, the applicant has preferred the present OA. The applicant has also sought consequential benefits. *Sub.*

2. The case of applicant in brief is that she was appointed as a Civilian School Teacher. As she was a Trained Graduate, she was teaching the Hospital Nurses and Medical Assistants subjects like Physics, Chemistry, English and Instructional techniques. The applicant represented in 1976 (Annexure-A-1) that as she is teaching subjects at Secondary level she should be given the Trained Graduate Teacher's scale. The applicant thereafter submitted another representation for appropriate designation and grant of due pay scale with retrospective effect. The applicant was re-designated as a Civilian Educational Instructor in March, 1985 and was regularised in that post in November, 1985. The applicant has thereafter kept on submitting repeated representations, even after rejection of her request in 1990.

The further case of the applicant is that the Chattopadhyaya Commission was appointed in 1986. The remarks column in CDS (RP) Rules, 1986 shows that she should have been given TGT pay scales in 1986. Similarly the instructions for miscellaneous teachers in the Revised Pay Rules, 1997 should have governed her case.

3. The case of respondents in brief is that the applicant was appointed against the sanctioned post of Civilian School Master and pay scales attached to the post was granted to her. She was subsequently directly recruited to the post of Civilian Educational Instructor on 9.3.1985 against the posts sanctioned L

in 1983. The certificate signed by her at the time of taking up of this assignment, which has been countersigned by the then Lt. Commander, refers (Anneexure - R-2). As she has been appointed, against a post created in 1983, in 1985, the question of giving seniority from 12 years' back was unacceptable.

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It was further contented that the application is time barred. In case she wants the benefit from 1973, this Tribunal has no jurisdiction. At best, the cause of action arose in 1990 and 1991 when her representations were rejected (Annexure-A-11 and A-12). Repeated representations cannot give rise to fresh cause of action.

4. We have heard the learned lawyer on behalf of both the parties.

5. A perusal of Annexure-A-6 shows that the applicant was appointed on ad-hoc basis against a post sanctioned in 1983. Pursuant thereto the applicant has submitted a representation dated 7.11.1985 (Annexure-A-7), the relevant extracts from which are as follows -

" I was promoted to the post of a Civilian Educational Instructor on ad-hoc basis with effect from 9th March, 1985. I have not been made permanent so far in spite of a lapse of a period of eight months since then. The delay in subsequent sanction by the Naval Headquarters for making me permanent in the present appointment as a Civilian Educational Instructor has been adversely affecting my seniority and depriving me of other benefits in the cadre. This has been also affecting my morale." A

The applicant thereafter was regularly appointed vide order dated 4.12.1985. The applicant thereafter submitted a representation dated 25.2.1987 (Annexure-A-9), the relevant portion of which is as follows-

".....I was given a fresh appointment without considering my lengthy 12 years of service as Civilian School Master. I have been placed in the juniormost grade of Instructors thereby depriving me of all the benefits in the cadre and denying the value of seniority.

3. I request you earnestly to review and reconsider my seniority with effect from 2nd February, 1973 the date on which I joined the establishment so that I may not be the loser financially in the long run."

6. The certificate signed by the applicant at the time of adh-hoc promotion (Annexure-R-2) also refers.

7. It is thus very clear that the subsequent appointment was a fresh appointment. It was against a post sanctioned in 1983. Thus on merits the applicant has no case.

8. Applicant had tried to make out a case on the basis of the following comments in CDS (RP) Rules, 1986 -

"Those teachers who are not in the existing scales of pay mentioned in Col.3 may be given the revised scales mentioned in this Col. only after ensuring that they have the prescribed qualifications. Those who do not possess prescribed qualifications will be given the revised scales mentioned in Part 'A' of this Schedule, which corresponds to their existing scales."

The applicant has relied on the provisions of revised orders issued by Ministry of Human Resources Development in of the case of Fifth Pay Revision. A

These rules are not automatically extendable to Defence employees who are governed by their own pay rules. As far as 1986 Rules are concerned they only mean that if they are Teachers but do not fulfil the necessary qualifications e.g. being a Trained Teacher, then they will not be given the pay scales.

9. It is settled principle of law that a person appointed to a post with superior qualifications will get only the pay attached to the post and not the pay of the post to which he would be entitled because of his superior qualifications. Thus this argument has only been stated to be rejected. The applicant has also relied on a number of decisions viz. K.V.Rama Lakshmi Vs. Flag Officer Commanding-in-Chief, Eastern Naval Command and another, (1998) 37 ATC 419 (FB), Arati Roy (Smt.) Vs. Union of India & another, (1998) 37 ATC 381, Sarwan Das Vs. Director General, ICAR and another, (1997) 36 ATC 426, Union of India and others Vs. Bijoy Lal Ghosh and others, 1998 SCC (L&S) 818. Attention was specifically drawn to the decisions in the case of Sarwan Das (supra) and Bijoy Lal Ghosh (supra). Sarwan Das was an employee of the Indian Council of Agricultural Research (in short 'ICAR') and the ICAR had introduced a 'technical' service. The Rules provided that employees will be fitted into different categories depending on his qualifications. The grievance of the applicant in that case was that though he was qualified he was adjusted against a lower scale. The case is clearly distinguishable. *Am*

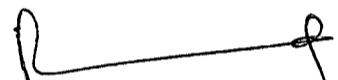
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In Bijoy Lal Ghosh's case (supra), Primary School Teachers who had been rendered surplus and were relieved from the Surplus Cell and re-deployed in other posts, were not given the benefits of revised pay scales sanctioned vide Ministry of Education dated 12.8.1987 w.e.f. 1.1.1986. They were aggrieved by the non-payment of revised scales of pay from 1.1.1986 to 2.9.1986. Thus this is also distinguishable. We find that the other decisions are also not applicable.

10. In view of what has been discussed above, there is no merit in the OA and the same is dismissed. No costs.

Shankar Prasad

(Shankar Prasad)
Member (A)



(R.R.K. Trivedi)
Vice Chairman

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