

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH JAIPUR

TA-4/99

S.B.C.W.P.NO.6875/91

Date of orders: 24/4/2001

S.M. Goyal son of Shri Jugal Kishore, aged 57 years,  
R/o 1, Arvind Park, Tonk Road, Jaipur.

...APPLICANT

V E R S U S

1. Kendriya Vidyalaya Sangathan through the  
Commissioner, Kendriya Vidyalaya Sangathan,  
New Mehrauli Road, New Delhi.
2. The Assistant Commissioner,  
Regional Office, Kendriya Vidyalaya Sangathan,  
2-2A, Jhalana Doongri Ist Floor, Jaipur.

...RESPONDENTS

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Mr. R.D. Rastogi, counsel for the applicant.  
Mr. Hemant Gupta, proxy counsel for  
Mr. V.S. Gurjar, counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Judicial Member —  
Hon'ble Mr. A.P. Nagrath, Administrative Member

ORDER

(per Hon'ble Mr.A.P. Nagrath)

This S.B.C.W.P. was filed before the High Court of Judicature for Rajasthan at Jaipur in 1991 and has been transferred to this Tribunal as per orders passed by the High Court dated 10.09.1999. At the time of filing of the writ petition, the applicant was working as Education Officer, and has retired from service on 30.10.1992.

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2. In this application, the applicant has prayed for direction to the respondents to fix his pay at par with his juniors and to count the past service of 19 years rendered in other schools for pensionary benefits.

3. In so far as the claim for pay fixation with respect to his juniors Shri K.K. Bhatt and Shri R. D. Sharma is concerned, his plea is that the applicant was promoted by way of selection as Education Officer and he joined his duties at Jaipur on 05.08.1985 and at that time ~~he~~ was drawing a pay of Rs. 1700/- in the pay scale of 1300-1700. After introduction of 4th pay commission pay scales, the revised pay scale of education officer became Rs. 3000-5000 and the applicant's pay was fixed in this scale at Rs. 4125/- on 01.01.1986, while the pay of Shri K. K. Bhatt, who is stated to be junior to the applicant, his pay was fixed at Rs. 4500/- w.e.f. 01.01.1986. Contention of the applicant is that Shri K.K.Bhatt joined as Education Officer on 23.12.1985 and Shri R.D.Sharma on 06.03.1986 and since, they were promoted much after the applicant. In that view his pay has to be protected with respect to ~~his~~ juniors. As Principals all the three, i.e. the applicant, Shri Bhatt and Shri Sharma are stated to have been drawing the same pay Rs. 1700/- in the pay scale of Rs. 1000-1600 before the applicant was promoted as Education Officer. Even in the seniority list of Education Officers, the applicant has been shown at serial No. 51, while Shri Bhatt

at Serial No. 52 and Shri R. D. Sharma at Serial No. 56. The applicant submits that the fundamental rules specifically provide for stepping-up of the pay of senior with respect to his juniors and under the provisions of those rules, his pay should have been fixed at Rs. 4500/- w.e.f. 01.01.1986.

4. On the point of counting of previous service, the applicant has submitted that he was working in Government aided schools or K.V.S. from 06.09.1952 to 05.09.1970 but this period of 18 years is not being counted by the respondents for his pensionary benefits while other similarly placed have been given the benefit of their previous service. The details of the past service rendered by the applicant have been given as follows :-

S.NO.	Post Held	Institution	Period from to
1.	Asstt. Teacher	Agarwal Hr. Sec. School, Ajmer (Govt. aided)	6.9.52 to 30.6.63
2.	Sr. Teacher in English	-do-	1.7.63 to 14.6.65
3.	Gr.I Teacher	Demonstration School, Regional College of Edu. Ajmer (NCERT)	15.6.65 to 15.9.67
4.	Principal	Kendriya Vidyalaya Jodhpur.	16.9.67 to 26.12.1967
5.	Gr. Teacher	Demonstration School, Regional College of Edu. Ajmer (NCERT)	27.12.67 to 30.6.69
6.	Sr. Teacher	St. Anselm's School, Ajmer	1.7.69 to 5.9.70
7.	Principal later Edu. Officer	KVS	12.9.70 contd. (Gap from 5.9.70 to 12.9.70 because of natural calamity)

5. The plea of the applicant is that in the cases of many of his juniors officers, their past services have been counted for the purpose of pensionary benefits and that same benefit is being denied to him illegally. This action of the respondents is stated to be in violation of the provisions of Articles 14 and 16 of the Constitution of India.

6. Respondents in their written reply, have contested the stand of the applicant on both the counts i.e. of stepping up of his pay as also of counting of his past service except for the period he worked in St. Anselm Higher Secondary School, Ajmer. In so far as stepping up of the pay of the applicant is concerned, the respondent's stand is that, he was appointed as Education Officer through a process of direct recruitment which was resorted to after public notification, while the juniors to the applicant Shri Bhatt and Shri Sharma were made Education Officers against the departmental promotee quota. Because of this, it is stated, <sup>that</sup> pay of the direct recruit cannot be compared with the pay of the promotees and the direct recruit cannot claim stepping up of his pay with respect to the promotees.

7. On the matter of counting of past service, it was disclosed by the learned counsel for the respondents and also admitted by the officiate side that the service rendered by the applicant in St. Anselm Higher Secondary School has already been counted. For service rendered prior to his joining in St. Anselm School, the respondent's case is that the same period cannot be counted as it is not covered under the rules. Contention of the respondents, is that counting of the previous service is regulated by departmental rules and the cases of others, whose past services have been counted cannot help the applicant.

It has been stated that the applicant had resigned from the post of Principal K.V.S., Jodhpur on 26.12.1977 on his own violation on personal grounds and under Rule 26 of CCS ( Pension ) Rules, 1972 adopted ~~mutatis mutandis~~ by K.V. Sangthan, resignation from service or post entails forfeiture of past service. Because of this reason, the service rendered by the petitioner from 06.09.1952 to 26.12.1967 cannot be counted for the purpose of pensionary benefits. In so far as, the period from 27.12.1967 to 30.06.1969, when the applicant worked in Regional College of Education, the reason advanced is that his services were dispensed with or being surplus and being junior post. And hence, his service for this period could also not be counted.

8. In the rejoinder filed by the applicant, he has challenged the stand of the respondents that he was appointed as Education Officer, as a direct recruit. His plea is that on the relevant time, the recruitment rules for the post of Education Officer in force were the ones issued on 12.07.1983. Under these rules, 50% of the posts in scale of Rs. 1300-1700 were to be filled up by promotion from amongst the Principals of K.V.S. on merit-cum-seniority basis and the remaining 50% by transfer on deputation from amongst officers of the Central/State Government/Autonomous Organisations. It is stated, by the applicant that he was promoted under the 50% promoted quota from amongst Principals of K.V.S. on merit-cum-seniority. His juniors Shri K.K. Bhatt and R. D. Sharma had also appeared in that selection but he being the senior and meritorious candidate was selected and appointed. His further plea is that on his appointment as Education Officer, his pay was fixed at Rs. 4125 in scale Rs 3000-5000 and this was done only after following

the procedure under the Rule FR 22-C which applies only to case of promotion, if it were a case of recruitment, the applicant submits that his pay would be fixed at Rs.3000 Since, Shri Bhatt and Shri Sharma were promoted much later than the applicant and their pay was fixed <sup>at</sup> Rs.4500 as on 1.1.86, he contend that he has been unfairly denied stepping up of his pay illegally.

9. On the point of counting of previous service the applicant has contested the stand taken by the respondents on the ground that every time he has been representing to the respondents, they have taken different stand to deny his claim. The plea of the respondents that his past service cannot be counted as he had resigned while working in K.V.S. Jodhpur, the applicant states that one Shri Madan Gopal (Retired Assistant Commissioner) was given the benefit of his previous service from 1951 to July 1965. When he was working in H.N. Inter College Ganj, Doodhwara, District Etah. He had also joined K.V.S. after his resignation from H.N. Inter College. He again resigned from K.V.S. in January, 1966 and <sup>went</sup> back to H.N. Inter College. He resigned from there yet again and joined K.V.S. as Principal of K.V.S. Rajkot on 15.7.66. Inspite of this (his resignation) his past services were counted. An affidavit from Shri Madan Gopal to this effect has also been filed as Annexure-14 in support of the applicant's contention.

10. The respondents in their written reply to the rejoinder have filed, the recruitment rules vide letter dated 1.2.84. As per these rules since the scale of Rs. 1400-1700 are to be filled up by direct recruitment to the extent of 50% and remaining 50% by promotion from amongst Principals of K.V.S. on merit-cum-seniority. Respondents contend that it was against direct recruitment

quota, the applicant was appointed and while fixing his pay, his past service as Principal of K.V.S. was taken into account to fix his pay and that this cannot create any right in him to claims stepping up of pay with respect to Shri Bhatt or Shri Sharma who were appointed as Education Officers against promotee quota. Regarding counting of previous service of Shri Madan Gopal, it has been stated that his past service was counted as he had furnished all required documents which indicated that his application to K.V.S. was forwarded through proper channel. However, in view of the affidavit placed on record from Shri Madan Gopal, the respondents stated that necessary action will be taken on review, the matter and action will be taken against Shri Madan Gopal, if it is proved that he has suppressed facts before K.V. Sangthan at the time of counting<sup>of</sup> his past service.

11. In the additional affidavit filed by the applicant he has enclosed certificates from Agarwal Higher Secondary School, Ajmer, Demonstration Multi-Purpose School, Ajmer and District Education Officer, Ajmer to prove that his applications were forwarded at the relevant time through proper channel.

12. Heard, the learned counsel for the parties and perused the entire record with all its written statements and Annexures.

13. Learned counsel for the applicant refuted the plea of the respondents that the applicant had been appointed as Education Officer through the process of direct recruitment, on the basis that at the relevant time there were no rules providing for such direct recruitment. The revised rules were issued only in February, 1984 whereas the notification against which

the applicant was appointed was dated 4.1.84. On the matter of counting the previous service. The plea of the learned counsel was that the respondents are discriminating against the applicant and denying him the benefit of his previous service on the ground that he had resigned while working in K.V.S. Jodhpur on personal grounds. He submitted that the case of Shri Madan Gopal is similar, who had also resigned from his previous service but his previous service was duly counted. In that view, he stated that the respondents cannot discriminate against the applicant and treat him differently.

14. Learned counsel for the respondents submitted that counting of past service depends on compliance of the specific provisions of rules. In all those cases where the employees satisfy the requirement of rules their past service has been counted. Whereas the case of applicant, he had resigned from K.V.S. Jodhpur on personal reasons in such a situation CCS (Pension) Rules do not permit counting of the past service.

15. After the oral arguments were concluded, the learned counsel on either side, sought permission to file written submissions. The prayer was granted and candidate were directed to file their written submissions within one week. The written submissions from the learned counsel for the applicant's side have been filed reiterating the stand taken by the applicant earlier on stepping up of pay emphasising that the amended rules dated 21.2.84 cannot be made applicable for vacancies of 1982-83 advertised on 4.1.84. The applicant has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of U.O.I. Vs. P. Jagdish reported 1977(7)SCC 176 and also T. Achyut Ramaya Vs. Regional Director employee State Insurance Corporation, Hyderabad 1992(21)



ATC 78 and N. Lalita and Ors. Vs. U.O.I. and Anr. 1992  
(19)ATC 569 to support his claim of stepping up of pay.

16. Regarding counting of past service, the applicant has submitted that rules provide for resigning from the existing service to take up another employment, if the application has been forwarded through proper channel and he contends that his application was forwarded through proper channel from Agarwal School and from Demonstration school Ajmer. He has emphasized that past service of similarly situated Shri Madan Gopal have been counted for pensionary benefits whereas he is being denied the same.

17. From the respondent's side copy of the decision relied upon has been made available. This is the case of J.C. Patnayak and Ors. Vs. State of Orissa 1998(SC)GJ.

18. We have carefully considered the rival contentions on the issue whether the applicant was posted as Education Officer as a direct recruit or on promotion by selection. We have gone through the cases relied upon by the applicant. On this issue he placed reliance on case No.1985 SCLR (L) 136 decided by Hon'ble the Supreme Court of India on 5.9.88. In the case of P. Gyaneshwar Rao and Ors. Vs. State of Andhra Pradesh and Ors., the issue before the Apex Court was whether it was permissible for the State Government to make direct recruitment to 51 vacancies after the special rules were amended on 29.4.80, irrespective of the fact that the vacancies in question had arisen prior to the date of amendment. In this case the Tribunal had rejected the contention of the State Government stating that it was not permissible for the State Government to make a recruitment to the 51 vacancies after the special rules had already been amended on 29.4.80 irrespective of the fact that the

vacancies in question had arisen prior to the date of amendment. Hon'ble the Supreme Court rejected this view of the Tribunal and held that the amendment made on 28.4.80 does not apply to the vacancies which had arisen prior to date of amendment. A reference was made by the Apex Court to the case of Y.V. Rangappa and Ors. etc. Vs. D. Srinivas Rao and Ors. in which a similar situation was there and the Court had observed in Paragraph 9 on Page 298, 1983(3) SCC 264.

"The vacancies which occurred prior to the amendment rules would be governed by the old rules and not by the new amendment rules....."

We have not the slightest doubt that the posts which fell vacant prior to the amendment rules would be governed by the old rules and not by the new rules."


19. In the instant case, the notification for filling up the vacancies of Education Officer was issued in January, 1984, the amended rules have been issued only on 21.2.84. It cannot be stated that when the vacancies was advertised, the amended rules had already came into force. In view of the law laid down by the Hon'ble Supreme Court in such matters, as discussed above, the conclusion is obvious that the applicant was appointed as Education Officer only against promotee quota and not as a direct recruit. In that view, he is entitled to stepping up on his pay with respect to his junior Shri K.K. Bhatt w.e.f. 1.1.86. However, this application was filed only in year 1991, the payment of arrears shall be restricted to one year before filing of the application. Consequent to this stepping up of the pay his pensionary benefits will also be revised accordingly.


20. In so far as counting of his past service is concerned, the applicant has not been able to successfully counter the arguments of the opposite side that he had resigned from K.V.S. Jodhpur on his own violation.

He has attempted to take support from the case of Madan Gopal. Service matters are governed by rules and action taken in the case of any other employee in the department even though similarly situated, cannot become a ground for extending the same <sup>benefit</sup> to others, in case the same is not admissible under the rules. The applicant has to prove his own case on merits within the provisions of rules and that only can give him the relief. In 2000SCC (L & S) 845. State of Bihar & Ors. V/s Kameshwer Prasad Singh & Anrs. It is held by the Hon'ble Supreme Court that benefit granted to some persons in illegal or irregular manner cannot be claimed by others on the plea of equality. Written orders or judgment passed in favour of one person would not entitle others to claim similar benefits. If that be the legal position, we cannot direct the department to grant similar benefit to the applicant as has been given to Shri Madan Gopal. As we said earlier, the applicant has to prove his case on its own merits. On that ground we find the plea of the applicant fails.

21. In view of the facts and circumstances as above, the OA is partly allowed. The plea of the applicant, in so far it relates to counting of past service for the period from 6.9.52 to 30.6.69, is dismissed. However, the respondents are directed to protect the pay of the applicant with respect to his junior Shri K.K. Bhatt w.e.f. 1.1.86. The arrears of stepping up of pay shall be paid to the applicant for the period from one year prior to date of filing of the application. All his pensionary benefits shall be worked out based on his revised pay after stepping up. This exercise shall be completed by the respondents within three months from the date of order.

22. In the facts and circumstances of the case, parties are left to bear their own costs.

  
(A.P. Nagrath)  
Admn. Member

  
(S.K. Agarwal)  
Judl. Member