

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 19/11/2001

OA 104/2001

Mrs. Sushma Nagar, TGT, Kendriya Vidyalaya No.2, Jaipur, r/o A-77, Vaishali Nagar, Jaipur.

... Applicant

v/s

1. Union of India through Secretary (Education), Ministry of Human Resources Development, Shastri Bhawan, New Delhi.
2. Commissioner, FVS, 19, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. Asstt. Commissioner, FVS, Regional Office, Bajaj Nagar, Jaipur.
4. Principal, FVNo.2, Jaipur Cantt., Jaipur.

... Respondents

CORAM:

HON'BLE MR. S. P. AGARWAL, JUDICIAL MEMBER

HON'BLE MR. A. P. NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr. P. V. Calla

For the Respondents ... Mr. V. S. Gurjar

O R D E R

PER HON'BLE MR. A. P. NAGRATH, ADMINISTRATIVE MEMBER

Applicant, initially appointed as Trained Graduate Teacher (TGT, for short) vide appointment letter dated 7.9.82, joined her duty on 13.9.82 and was promoted to Senior Scale grade Rs.1640-2500 by order dated 31.10.95. The essential condition for promotion to Senior Scale is that the teacher should have put in 12 years of service. By order dated 30.9.99 (Ann. A/1) the order dated 31.10.95, promoting the applicant to Senior Scale w.e.f. 13.9.94, was cancelled and she was ordered to be promoted w.e.f. 16.10.96. She represented against this order and her representation was disposed of by the



respondents by order dated 25.5.2000 (Ann.A/2), rejecting her representation on the ground that the service rendered on ad hoc/trial basis cannot be counted for grant of Senior Scale and that the service should be counted for grant of Senior Scale only from the date her service was regularised on acquiring necessary qualification. She has challenged these impugned orders (Anns.A/1 and A/2) on the ground that she had in fact completed the requisite qualifying service when she was promoted w.e.f. 13.9.94 and that this date cannot be changed to 16.10.96. By an interim order dated 15.3.2001 respondent No.3 had been directed not to make any recovery from the applicant in pursuance of Anns.A/1 & A/2. The said interim order has continued.

2. Essentially, the controversy revolves around the fact whether the length of qualifying service as 12 years shall be reckoned from the date of her initial appointment, which was "on trial" basis, or from the date when she acquired the qualification of B.Ed.

3. The applicant was admittedly appointed "on trial" basis and at the time of her appointment she did not possess the qualification of B.Ed. The trial period was stipulated as two years. Clause 3(iii) of the appointment letter provide that if her work and conduct during the trial period was satisfactory, she will be nominated to a teachers' training degree/diploma course. It is clear from the facts that she acquired B.Ed qualification on 16.10.94 when the result of the said B.Ed. course was declared.

4. The respondents have defended their action of modifying the date of applicant's promotion to Senior Scale on the ground that the Senior Scale is granted to teachers after completion of 12 years of regular service. The service rendered 'on trial' basis cannot be counted for grant of Senior Scale. The service should be counted for

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grant of Senior Scale only from the date of the service having been regularised on acquiring the necessary qualification as per terms and conditions of the offer of appointment. Since the applicant had acquired B.Ed qualification only on 16.10.84, the respondents contend that she has correctly been promoted to Senior Scale w.e.f. 16.10.96 i.e. after 12 years of regular service from that date and that the earlier order of promoting her from 13.9.94 was erroneous.

5. We find that this controversy had come up for consideration before the coordinate bench of this Tribunal in which one of us i.e. Shri S.K. Agarwal, Member (Judicial), was a Member, in OA 148/2001, Sushil Kumar Jain v. Union of India and Others. In that case, the applicant was Post Graduate Teacher (PGT), who was also initially appointed on trial basis. The condition for promotion to Senior Scale of a PGT was also the same i.e. after completing 12 years of service. The OA of that applicant was allowed in view of the conditions stipulated in para 4(iv) of the letter of appointment; "in the event of completing the training course satisfactorily in the first attempt, he will be appointed as regular PGT on probation for two years. Satisfactory service during the trial period will count towards two years' probation period." This clause of the letter of appointment was discussed at length and it was held that after satisfactory completion of training and acquiring the qualification in first attempt, the applicant was entitled for consideration of the two years' period put in on trial as period of regular service, since the said period stood converted into the period of probation.

6. In the instant case before us, all the conditions are exactly the same. In the letter of appointment, the condition in clause 3(iv) is reproduced below :-

"iv) In the event of his/her completing the training course

satisfactorily in first attempt, he/she will be appointed as regular T.G.T. on probation for two years. Satisfactory service during the trial period will count towards the two years' probation period."

We do not see any reason for differing with the view already taken in OA 148/2001. Learned counsel for the respondents, apart from the oral arguments, has filed written submissions to oppose the claim of the applicant. The main ground taken is exactly the same as had been taken by the respondents in OA 148/2001. The main plea is that vide communication dated 6.5.94 a clarification had been issued in unequivocal term that the service rendered on ad hoc basis cannot be counted for grant of Senior Scale/Selection Scale and that the service should be counted for grant of Senior Scale/Selection Scale only from the date their services were regularised on acquiring the necessary qualification. The learned counsel has placed reliance on a number of cases, which are listed below :-

- (i) [Union of India v. Arun Kumar Roy, (1986) 1 SCC 675],
- (ii) [R.Prabha Devi v. Govt. of India, (1988) 2 SCC 233],
- (iii) [N.Suresh Nathan v. Union of India, 1992 Supp (1) SCC 584],
- (iv) [D.K.Jain v. State of Haryana, 1995 Supp(1)SCC 349],
- (v) [V.Subba Rao v. Secy.to Govt. Panchayat Raj & Rural Development, Govt. of A.P., (1996) 7 SCC 626],
- (vi) [Pilla Sitaram Patrudu v. Union of India, (1996) 8 SCC 637],
- (vii) [P.Sadagopan v. Food Corpn. of India, (1997) 4 SCC 301],
- (viii) [Chairman, Rly.Board v. C.R.Rangadhamaiyah, (1997) 6 SCC 623],
- (ix) [U.P.State Cement Corpn. Ltd. v. P.K.Tiwari, (1998)



2 SCC 542],

(x) [Union of India v. G.R.K.Sharma, (1998) 6 SCC 186],

(xi) [State of Haryana v. Haryana Veterinary & Ahts Assn.,
(2000) 8 SCC 4],

(xii) [Pabitra Mohan Dash v. State of Orissa, (2001) 2
SCC 480] &

(xiii) [Union of India v. Rakesh Kumar, (2001) 4 SCC
309]"

essentially to contend that conditions of service of an employee under the Government, once he has been appointed, shall be governed by the rules governing his service conditions and it will not be permissible thereafter for him to rely upon the terms of contract which are not in consonance with the rules governing the service. We do not find any dispute raised on this point in this matter. It is an accepted legal position that once an employee takes up an appointment, his further status is determined and regulated by the service rules and not by the conditions given in the appointment letter, in case the same are in contravention of the service rules. In the case of Union of India v. Arun Kumar Roy, as cited by the learned counsel, this position has been made clear in para 15 of the observations of Hon'ble the Supreme Court. In this, a reference has been made to the order of appointment which makes it clear that the respondent was to be on probation for a period of two years which could be extended, if necessary. Appointment order also made it clear in that case that the appointment was to be on a temporary basis. Hon'ble the Apex Court observed that unless the respondent makes out a case based on some rules which require confirmation to a post on the expiry of the period of probation, he cannot succeed on the mere ground of his being put on probation for a period of two years or by the fact that his probation was extended. He cannot rely upon the first clause in the order of appointment either which states



that the post is temporary but is likely to continue.

7. It is obvious that it becomes necessary to refer to the letter of appointment only in case the provision on a particular aspect is not available under the relevant service rules. The respondents themselves have referred to the case of U.P. State Cement Corporation Ltd. v. B.K. Tiwari, where the stress is on the fact that the applicant had accepted the offer of appointment with the terms and conditions contained therein and that the applicant cannot read the offer of appointment beyond what it says and stipulates.

8. So, the controversy is not about following the conditions stipulated in the letter of appointment. It is essentially about the service rules. As had been observed by the Bench in OA 148/2001, the department has not been able to produce any rule to the effect that the period of trial, which later is treated as a period of probation, cannot be counted as a period of regular service. A mere clarification which, in this case has been issued on 6.5.94, cannot take the shape of a rule. Administrative instructions or clarificatory orders can only supplement the rules but cannot impart a meaning to a rule which the rule itself did not intend. Such clarifications/administrative instructions also cannot take the form of rules themselves. The only requirement, as per the rules, is that a TGT must complete 12 years service before promotion to Senior Scale. On this aspect, it will be relevant to produce the observations of the Bench in OA 148/2001, as follows :-

"10. Before we part with this order and record our decision in this OA, we would like to point out that the learned counsel for the respondents has, after final hearing in this case proceeded to file written submissions, in which a reference has been made by him to a certain circular dated



6.5.94, in which certain doubts raised in respect of a few service matters have been clarified. One of the doubts raised was in the following terms :-

"Whether services rendered as ad hoc, trial period and past services rendered in some other department will be counted for granting of Senior Scale."

The same has been clarified thus:

"The service rendered on ad hoc basis cannot be counted for grant of Senior Scale/Selection Scale. The services should be counted for grant of Senior/Selection Scale only from the date their services were regularised on acquiring the necessary qualifications."

The learned counsel has, in view of the aforesaid position, submitted that the grant of Senior Scale would be permissible only after counting the service from the date of applicant's regularisation consequent upon his acquisition of the requisite qualification. We are not quite sure about the position for the reason that the aforesaid circular dated 6.5.94 does not appear to have been issued after obtaining the approval of the authority competent to issue such instructions. We also find it difficult to treat the aforesaid circular as being clothed with the necessary constitutional authority in the same way in which administrative/executive instructions are issued by the government in service matters in order to fill in the gaps in rules or to supplement the rule position. The sanctity of the aforesaid instructions is, therefore, in our view, in serious doubt and we hold accordingly.

11. In this OA, as already seen, we are considering the question of grant of Senior Scale and also of promotion of



the applicant to the higher post of Vice Principal. Both these matters have already been discussed in considerable detail in the preceding paragraphs. We have noticed that the respondents have placed reliance on the same clarification, as has been brought out above as part of the respondents' circular of 6.5.95. The sanctity of the aforesaid circular being in doubt, the matter regarding the grant of Senior Scale to the applicant stands decided in terms of what we have already held in the preceding paragraphs. The same will hold good in regard to the conclusion reached in the preceding paragraphs about the applicant's promotion to the post of Vice-Principal. We have also noticed that the respondents have not placed before us any rule stipulating the period of 12 years of service for grant of Senior Scale. Whether the aforesaid period of 12 years will be counted from the date of regularisation or else, whether the entire service rendered by the applicant will be taken into account has, therefore, been determined by us by an interpretation of whatever rules have been placed before us and the stipulations made in the appointment letter. The terms 'service' or 'regular service' have not been defined in the rules placed before us. These very reasons have weighed with us in declaring the matters in this OA in the manner we have done in the preceding paragraphs."

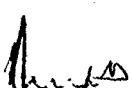
Interestingly, the respondents themselves have taken support from the conditions in the letter of appointment to counter the claim of the applicant, by stating that clause 3(i) of the appointment letter clearly states that seniority of the appointee shall be reckoned from the date he acquires requisite qualification. This, of course, does not help the case of the respondents, as the issue before us is not the seniority of the applicant but is whether she is entitled to



promotion to Senior Scale after completion of 12 years of service from the date of her initial appointment. No rules have been brought to our notice which would suggest that under the departmental rules seniority is also a factor to be reckoned for determining eligibility for promotion to Senior Scale. We do not find any force in this argument of the respondents.

9. In view of the aforesaid discussion, we come to the same conclusion as drawn in OA 148/2001 that the period 'on trial' and later treated as period on probation, has necessarily to be counted to determine the qualifying service of 12 years. In this case, the applicant had joined on 13.9.82 and had acquired B.Ed. qualification in the first attempt. Her period of trial thus stood converted to the period of probation and consequently the length of service required as 12 years has necessarily to take off from the date of her initial appointment.

10. For the reasons discussed in the preceding paragraphs, we allow this OA and quash and set aside the impugned orders dated 30.9.99 (Ann.A/1) and 25.5.2000 (Ann.A/2). The respondents shall consider the applicant as having been promoted to Senior Scale w.e.f. 13.9.94, as initially ordered vide letter dated 31.10.95. The applicant is entitled to all consequential benefits, if any arise. No order as to costs.


(A.F.NAGRAJTH)

MEMBER (A)


(S.K.AGARWAL)

MEMBER (J)