

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 10<sup>th</sup> Sept, 2001

OA 148/2001

Sushil Kumar Jain son of Shri B.P. Jain aged about 48 years, presently working as Post Graduate Teacher (Physics), Kendriya Vidyalaya No.3, Jhalana Dungri, Jaipur, resident of 89, Shiv Shaktri Nagar, Jagatpura Road, Jaipur.

....Applicant.

VERSUS

1. Union of India, Kendriya Vidyalaya Sangathan through its Dy. Commissioner and Principal Secretary, 18 Institutional Area, Sahid Jeet Singh Marg, New Delhi.
2. The Commissioner Kendriya Vidyalaya Sangathan, 18, Institutional Area, Sahid Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
4. The Principal, Kendriya Vidyalaya No. 3, Jhalana Dungri, Jaipur.

.... Respondents:..

Mr. Manish Bhandari, Counsel for the applicant.

Mr. V.S. Gurjar, Counsel for the respondents.

CORAM

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. S.A.T. Rizvi, Member (Administrative)

ORDER

PER HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMINISTRATIVE)

The applicant in this OA was appointed as P.G.T. vide respondents' Memorandum dated 21.10.1978 (Annexure A-1). The aforesaid Memorandum stipulates, inter-alia, the following conditions:-

"4(i) He/She would be placed 'on Trial' initially for a period of two years.

(iv) In the event of his/her completing the training course satisfactorily in the first attempt, he/she will be appointed as regular P.G.T. (Physics) on probation for two years. Satisfactory service during the trial period will count towards the two years' probation period.

(v) The seniority in the grade of P.G.T. on his/her regular appointment will count from the date, of announcing the result of teacher's training degree/diploma examination he/she passed, in the first attempt and he/she will be confirmed in his/her turn, subject to his/her continued efficiency and good conduct."

On his work and conduct having been found to be satisfactory during the period of trial, he was nominated to a teacher's training degree/diploma course in terms of the aforesaid Memorandum dated 21.10.1978. By Office order (Annexure A-2), the applicant was substantively appointed w.e.f. 13.11.1980, i.e., immediately after completing two years of his service on trial. By office order dated 21.7.1997 (Annexure A-3), the applicant was permitted to cross efficiency bar w.e.f. 01.12.1996.

2. On completion of 12 years of service, the applicant was placed in the senior scale of pay w.e.f. 13.11.90 by office order dated 2.2.1993. The aforesaid order was, however, cancelled by respondents by their office order of 29.9.2000 (Annexure A-4) on the ground that after his appointment as PGT on trial basis, the applicant had passed his B.Ed examination only on 16.10.84, and, for this reason, he would become eligible for the grant of senior scale of pay only after he has rendered 12 years of service in the existing grade from the date of passing the B.Ed examination. This requirement, is, according to the respondents, laid down in the KVS Rules. Before filing the present OA, the applicant had filed a representation before the respondents on 15.3.2001.

3. The applicant seeks annulment of respondents' office order (Annexure A-4) and consequently restoration of the order dated 2.2.93 by which he was placed in the senior scale of pay w.e.f. 13.11.90. He also seeks a direction to the respondents to grant consequential benefits by paying him the arrears and also by considering his case for promotion to the post of Vice-Principal from the date his next junior has been promoted. Accordingly the applicant also seeks restoration of his seniority position at no. 1868.

4. We have heard the learned counsel on either side and have perused the material placed on record.

5. In another OA, being OA No. 228/2001, R.P. Dua Vs. Union of India & Others, we had occasion to consider a similar case in which the order placing the applicant in the senior scale of pay was cancelled on the same ground as in the present case. The applicant in that OA was appointed as PGT by a Memorandum by using a format which did not apply to those appointed on trial basis. Accordingly the respondents had to make a correction in that regard at a belated stage and, having done that, they had deprived the applicant of the benefit of Senior scale. According to the respondents in that OA, the applicant should have been appointed by a Memorandum by using the format which has been used in the present case i.e. (Annexure A-1). Had that been done, the aforesaid conditions reproduced in paragraph no. 1 would have been made applicable to the applicant in that OA, and in that event, the applicant in that OA would not have been placed in the senior scale of pay just 12 years after he was appointed on trial basis. As stated, the rule position, according to the learned counsel, is that a PGT is required to complete 12 years of service from the date of his regular appointment which again,

according to them, coincides with the date of passing the B.Ed.

6. The rule based plea advanced by the respondents in the present OA was considered by us in that other OA as well. We had, while dealing with the aforesaid OA, taken note of the fact that in accordance with the specific stipulation made in Rule 4(iv) reproduced above, satisfactory service rendered during the trial period was supposed to count towards the two year period of probation. In other words, the respondents had by implication converted the trial period into period of probation and the same will, therefore, count towards service performed by the applicant. We have in that OA taken the view that satisfactory service rendered during the period of probation is nothing different from service regularly performed.

7. Following the same line with regard to the period of probation, in the present case also, we are inclined to hold that the period from the date of appointment till the completion of the trial period, i.e., the period from 13.11.78 to 13.11.80 will count towards service regularly rendered by the applicant and this period of two years will naturally be added to the service regularly performed by him subsequently. In the memorandum dated 21.10.1978 by which the applicant was appointed, there is a stipulation in the following terms in regard to the period, the applicant remained on training at the training institution:-

"He/she will not be deemed to be in the service of the Sangathan and will not receive any pay and allowances from the Sangathan for the period of his/her training at the training institution."

Going by the aforesaid provision, it is clear to us that the next period of applicant's service would take off only from the date on which applicant passed the B.Ed examination. This happened, according to the respondents, on 16.10.84. Thus, in the absence of a provision to the contrary (nothing was shown to us during the hearing), the aforesaid period of trial lasting two years will be added to the service rendered by the applicant from 16.10.1984 onward for the purpose of placing him in the senior scale and for considering him for further promotion in according with the rules. To be precise, after completing a service of two years from 13.11.1978 to 13.11.1980, the applicant will have completed another 10 years period of service by 16.10.1994, totalling in all to 12 years as on 16.10.1994. In the circumstances, the respondents should consider the applicant's case for placing him in the senior scale of pay, w.e.f. 16.10.1994.

8. In-so-far as the applicant's claim for consideration for promotion to the post of Vice-Principal is concerned, the relevant rule taken from the K.V.S. (Appointment, Promotion, Seniority etc.) Rules 1971, reads as under:-

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Name of	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees.	Method of recruitment whether by direct recruitment or by promotion or transfer and percentage of vacancies to be filled by various methods. In case of recruitment by promotion/transfer, grades from which promotion is to be made.
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Vice-  
Principal

N.A.

By promotion on the basis of seniority-cum-merit from amongst PGTs serving in the Kendriya Vidyalayas possessing the following qualifications:-

Essential:

1. At least second class Master's degree (45% marks and above considered as equivalent) in one of the subjects taught in Kendriya Vidyalayas.
2. Degree or Diploma in Education/Teaching.
3. At least 10 years experience as PGT in a recognised High/Higher Secondary School of which at least 3 years should be in Kendriya Vidyalaya.

Note:

PGTs who have secured less than 45% marks in Master's Degree examination and have rendered at least 12 years service as PGT in a High/Higher Secondary School of which at least 5 years should be as PGT in Kendriya Vidyalaya are also eligible for promotion.

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9. The aforesaid rule clearly lays down, interalia, that ten years experience as PGT is considered to be good enough for promotion to the post of Vice-Principal subject to the aspirant fulfilling all the other qualifications laid down in the rule above. We can see that the applicant in the present OA holds sufficient educational qualifications and also holds a degree in Education and at the same time by following our method of computation, had acquired 10 years experience as on 16.10.92, inclusive of the two years experience acquired during the period of trial. In our view, therefore, the applicant has become eligible for being considered for promotion to the post of Vice-Principal w.e.f. 16.10.92. His candidature for promotion to the post of Vice-Principal should accordingly be considered by the respondents having regard to his inter-se seniority position and other conditions prescribed under the relevant rules/regulations. If the applicant is found fit for promotion in his turn and also if the junior to the applicant has already been promoted, the applicant will have to be promoted from the date his next junior might have been promoted. The benefit of notional seniority and fixation of pay will also be extended to the applicant alongwith the other consequential benefits.

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 :-

*DR*

"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."

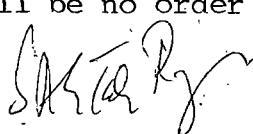
The learned counsel has, in view of the aforesaid position, submitted that the grant of Senior Scale would be permissible only after counting the service from the date of applicant's regularisation consequent upon his acquisition of the requisite qualification. We are not quite sure about the position 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.

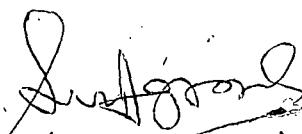
11. In this OA, as already seen, we are considering the question of grant of Senior Scale and also of promotion of the applicant to the higher post of Vice Principal. Both these

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.

12. For all the reasons brought out in the preceding paragraphs, we allow the present OA with the directions contained in paragraph no. 7 and 9 above. The respondents will carry out the aforesaid direction in a period of three months from the date of receipt of a copy of this order.

13. The OA is disposed of in the aforesaid terms. There shall be no order as to costs.

  
(S.A.T. RIZVI)  
MEMBER (A)

  
(S.K. AGARWAL)  
MEMBER (J)