

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER:

10th Sept, 2001

OA 228/2001

R.P. Dua son of Shri J.D. Dua aged about 47 years, resident of House No. 1353/32, Alwar Gate, Ajmer (Rajasthan).

.... Applicants

versus

1. The Union of India through its Dy. Commissioner and Principal Secretary, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.
4. The Principal, Kendriya Vidyalaya No. 1, C.R.P.F., Ajmer.

.... Respondents.

COURT:

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

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

Mr. Manish Bhandari, Counsel for the applicant.
Mr. V.S. Gurjar, Counsel for the respondents.

ORDER

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

The applicant was offered appointment as T.G.T. (Maths) on trial basis by respondents' letter dated 11.4.1983. Soon thereafter, he was offered appointment as P.G.T. (Maths) by respondents' Memorandum dated 10-10-1983 (Annexure -1) by which he was placed on probation for a period of two years. It

is admitted on all hands that at the time of his appointment as TGT and even as PGT, the applicant did not hold the B.Ed Degree. On 27.5.93, the respondents issued an office order (Ann.A/2) showing that the applicant had been substantively appointed as PGT w.e.f. 22.10.85, i.e., just two years after he was offered appointment as PGT. On this basis, in the seniority list issued by the respondents, the applicant was placed at S.No.2595-A. The said All-India seniority list was provisionally issued in respects of PGTs appointed from 1.4.79 to 30.4.95. Consequently, on completion of 12 years of service w.e.f. 22.10.83, the applicant was placed in the senior scale w.e.f. 22.10.95 by respondents' order dated 1.1.97. Unfortunately for him, the aforesaid order dated 1.1.97 was cancelled by the respondents in-so-far as the applicant is concerned by their office order of 20.4.2001. The aforesaid order (Ann.A/5) contains the following stipulations :-

"Shri R.P.Dua was appointed in KVS as PGT on 'Trial Basis' and his services were regularised with effect from 3.12.86 on passing his B.Ed examination. Therefore, he will be eligible for grant of Senior Scale only after completion of 12 years service in the present post on regular basis as per KVS Rules."

The aforesaid order was naturally followed by the respondents office order dated 25.4.2001 (Ann.A/6), clarifying, inter-alia, that the applicant will be eligible for appointment in substantive capacity from the date of regular appointment on passing his B.Ed examination as per KVS Rules. The same order further mentions that the date of applicant's substantive appointment should accordingly be corrected to read as 3.12.86. Aggrieved by the aforesaid

orders dated 20.4.2001 (Ann.A/5) and 25.4.2001 (Ann.A/6), the applicant has filed the present OA, praying that the aforesaid impugned orders be quashed and set aside and the respondents be directed to allow the applicant to avail of all the benefits arising from the respondents' order dated 27.5.93 (Ann.A/2), by which he was substantively appointed w.e.f. 22.10.85.

2. The applicant has made two representations dated 4.5.2001 and 18.5.2001 for reconsideration of the matter by the respondents. Subsequently, on not receiving any response from the respondents, the applicant has filed the present OA on 29.5.2001.

3. The learned counsel appearing on behalf of the respondents has submitted, without the applicant raising any dispute about it, that the letter of applicant's appointment as PGT was issued, due to inadvertence, on a format intended for use in cases of regular appointment. ~~That~~ The actual format is the one use in OA No.148/2001 (S.K.Jain v. U.O.I.) and which is placed at Ann.A/1 in that OA containing, 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 PGT (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 PGT on his/her regular appointment will count from the date of

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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."

Thus, the fact of the matter, according to him, is that shortly after his appointment as TGT on trial basis, the applicant was appointed as PGT also on trial basis keeping in mind the fact that he did not hold the B.Ed Degree. He has submitted that a TGT or a PGT appointed on trial basis without the appointee holding a B.Ed Degree, is regularised only after such an appointee succeeds in obtaining the B.Ed. Degree. In the present case, the applicant, while on the job as PGT, proceeded to join the B.Ed Course and succeeded in clearing that course, the result of which was announced on 3.12.86. As such, in accordance with the relevant rules, the applicant was regularised as PGT w.e.f. the said date namely 3.12.86. The aforesaid provision was clarified by the office order dated 6.7.90 (Ann.A/2) which also provides that the applicant would be on probation for a period of two years. The same order also stipulated as follows :-

"However, services rendered by him/her satisfactorily during trial period shall count towards probation period of two years."

The aforesaid order has been followed by a letter dated 18.7.90 (Ann.R/3), by which the KVS Headquarter has been requested to take appropriate action to amend the seniority number of the applicant who was earlier shown in the provisional seniority list at S.No.2595-A. Accordingly, the KVS Headquarter wrote back to say that the applicant's name has since been deleted from the aforesaid provisional seniority list and that his seniority status will be

notified in due course. The aforesaid letter is dated 14.9.90 (Ann.R/4). The same position was notified to the Principal, KVS, Mehsana, by the Assistant Commissioner, KVS, Gandhi Nagar's letter dated 4.10.90 (Ann.R/5).

4. Without promising to file any written submission, the learned counsel appearing for the respondents has, after the conclusion of the final hearing, done so. We have perused the same and find that a reference has been made therein to a certain circular letter of 6.5.94, issued by the respondents (KVS), in which a few doubts raised in regard to some of the service matters have been clarified. One of the doubts raised and answered in the aforesaid circular is as follows :-

"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 qualification."

Having regard to the aforesaid clarification, the learned counsel for the respondents has submitted that Senior Scale could be granted to the applicant only after counting the services rendered by him from the date of regularisation which coincides with the date on which the applicant acquired the requisite qualification. We are not quite sure

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about the position thus stated by the learned counsel and the reason for it is that the aforesaid circular, according to us, does not seem to have been issued after obtaining the approval of the competent authority. We are also convinced that it would be difficult to treat the aforesaid circular as being clothed with the same kind of constitutional authority which is available to the government in the matter of issuance of administrative/executive instructions in order to fill in the gaps in service rules or to supplement the rule position. The sanctity of the aforesaid instructions is, in the circumstances, held by us to be in serious doubt. Accordingly, we cannot proceed to follow the aforesaid clarification either.

5. In this OA, as we have already seen, the matter is regarding grant of Senior Scale to the applicant. The respondents have already relied upon the aforesaid rule laid down in the aforesaid circular by way of clarification. Keeping in view the observations made by us in the previous paragraph, we are not inclined to deviate from what we have already held in the matter in the preceding paragraph. We have also noted at the same time that no specific rule has been shown to us or placed on record by the respondents stipulating grant of Senior Scale after 12 years of service or regular service. Terms 'service' and 'regular service' have not been defined anywhere in the rules placed before us. For these reasons also we are fortified in the views we have already expressed in the matter in the preceding paragraphs. In the ultimate analysis, therefore, we are inclined to quash and set aside respondents' action in altering the date of substantive appointment of the applicant and in computing the length of service from the date on which the applicant got his B.Ed degree.

6. We have carefully considered the pleadings of the parties and the facts and circumstances brought out in the preceding paragraphs. We have noted that the period during which the applicant remained appointed on trial basis has been converted by the respondents themselves into the period

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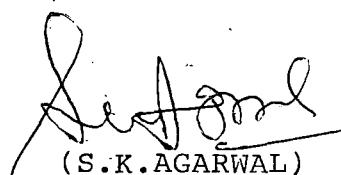
of probation vide office order dated 6.7.90, the relevant portion of which has been reproduced above. Since there is no dispute about the fact that the applicant performed satisfactorily during the trial period in question, the period of service rendered by the applicant on trial basis will be deemed to have been rendered on probation. The learned counsel for the applicant, in our view, correctly argued that the trial period having been converted into the period of probation, the respondents are no doubt obliged to take into account the aforesaid period of probation for the purpose of computing the length of service rendered by the applicant. The period spent by the applicant in doing his B.Ed course, during which he was obviously not working as PGT will, however, not be taken into account for determining the length of applicant's service, as above. The period during which the applicant remained busy with his B.Ed, has not been indicated in the pleadings placed on record. We will like to leave it to the respondents to ascertain the aforesaid period and having done that to compute the total length of service of the applicant, the starting point being 22.10.83. On completion of the aforesaid exercise, the respondents will place the applicant in the Senior Scale from an appropriate date and will also grant all the consequential benefits to the applicant. We direct accordingly. It is further directed that the aforesaid exercise will be completed by the respondents in a maximum period of three months from the date of receipt of a copy of this order.

7. The OA is allowed with the aforesated terms. No order as to costs.



(S.A.T.RIZVI)

MEMBER (A)



(S.K.AGARWAL)

MEMBER (J)