

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

16th September, 2009

OA. 137/2005

Present: None for applicant

Shri Praveen Poswal proxy for Sh.V.S.Gurjar, counsel for
respondents

Heard counsel for respondents.

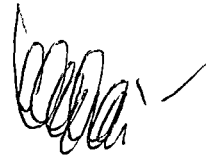
For the reasons to be reasons to be dictated separately, the

OA is dismissed.


(B.L. Khatri)

Member (Administrative)

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(M.L. Chauhan)
Member (Judicial)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of September, 2009

ORIGINAL APPLICATION No.137/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

1. Miss Sunita Chopra d/o Shri K.G.Chopra, r/o 106/56, Vijay Path, Mansarovar, Jaipur
2. Mrs. Renu Vaish w/o Shri Rajendra Vaish r/o B-1, Indraprastha Colony, Jagatpura Road, Jaipur.

.. Applicants

(By Advocate: None present)

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner, 18, Shahid Jeet Singh Road, Institutional Area, New Delhi.
2. Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Jaipur Region, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur

... Respondents

(By Advocate: Shri Praveen Poswal proxy counsel for Shri V.S.Gurjar)

ORDER (ORAL)

The applicants, two in number, have filed this OA thereby
praying for the following reliefs:-

- i) By an appropriate order or direction the impugned order dated 19.5.2004 Annex.A/1 may kindly be declared as illegal to the extent of the order providing the senior scale benefits to the applicants from 1991 and the respondents may be directed to modify the order by taking into consideration the date of appointment of the applicants as 7.9.1987/1.10.1986 and provide A.C.P. benefits from 7.9.1999/1.10.1998 respectively to both the applicant and fix the pay of the applicants in the higher pay scale accordingly and pay the arrears thereof.
- ii) By further appropriate order or direction if any order adversely affecting the rights of the applicant is passed during the pendency of O.A. the same may kindly be taken note of and be quashed and set aside.
- iii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.

2. Briefly stated, facts of the case are that the applicants were initially appointed by the respondents on trial/temporary basis till they acquire essential qualification as per rules on the post of T.G.T. (English) and T.G.T. (CBZ) in the year 1987 and 1986. Copy of offer of appointment has been placed on record as Ann.A2 and A3. One of the conditions in the offer of appointment was that they would be on trial initially for a period of two years till applicants acquire essential qualification as per rules. It was further stipulated in the offer of appointment that they will have to acquire their teaching degree within two years after receipt of the appointment letter on trial basis and their services will be regularized from the date of announcement of result of the degree and the trial period will be counted towards the two years period of probation. From the material placed on record, it is evident that the applicants were appointed on trial basis w.e.f. 7.9.1987 and 1.10.1986 respectively and they acquired B.Ed. degree from 20.6.1991 and 14.5.1991.

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Accordingly, their services were regularized from the date of announcement of result of B.Ed. degree and they were eligible for grant of Senior Scale w.e.f. 20.6.2003 and 14.5.2003 after completion of 12 years service in a particular grade on regular basis. The grievance of the applicants is that services rendered by them on ad-hoc/trial basis should be counted for the purpose of eligibility for grant of senior scale. According to the applicants, services rendered by them on ad-hoc/trial basis cannot be ignored for grant of senior/selection scale. It is further pleaded that certain persons whose names find mention in para 5(d) has been granted benefit from the initial date whereas the said benefit has been denied to the applicants.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, have not been disputed by the respondents. In the reply, the respondents have placed reliance on the clarification given to point No.6 vide circular dated 6.5.1994 which stipulates that services rendered on ad-hoc/trial basis cannot be counted for grant of Senior/Selection Scale.

4. In this case, none has appeared on behalf of the applicant, as such, we have proceeded to decide this matter in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987. We have heard the learned counsel for the respondents.

5. The sole question which requires our consideration is whether the ad-hoc/trial service rendered by the applicants can be counted for the purpose of grant of Senior/Selection Scale, even

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though the same has been counted for the purpose of taking into consideration two years probation. At this stage, we wish to quote the letter whereby offer of appointment was given to one of the applicant on certain terms and conditions. As can be seen from the order dated 26.8.1987 (Ann.A/2), offer of appointment to the post of TGT (English) was given to applicant No.1 subject to the condition mentioned in para-4. At this stage, it will be useful to quote condition No. 4(i), (iv) and (v), which thus reads:-

"4. The officer of appointment is subject to the following further conditions:-

(i) He/She would be 'On trial' initially for a period of two years.

.....

(iv) In the event of his/her completing the training course satisfactory in the first attempt, he/she will be appointed as regular TGT (English) 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 TGT on his/her regular appointment will count from the date of announcing the result of teacher' training/degree diploma examination if he/she passes in the first attempt. He/she will be confirmed in his/her turn subject to his/her continued efficiency and good conduct."

From perusal of the clause as reproduced above, it is clear that initially the applicants were appointed on trial basis for a period of 2 years. In case such person completes training course satisfactory in the first attempt, ~~it~~ is only thereafter he/she will be appointed as regular TGT as per clause (iv). In such cases the trial period will be counted towards probation period but clause (v) states that such a teacher will be treated as regular teacher from the date of announcement of result of the teachers' training/degree diploma examination if he/she passes in the first

attempt for the purpose of seniority. These conditions stipulated in the said letter unequivocally indicate that offer of appointment on the post of TGT was on trial basis for two years [condition No. (i)] and the service will have to be treated as regular only when teachers training/degree diploma examination has been passed in the first attempt and seniority on her regular appointment will be counted from the announcement of result of teachers training/degree/diploma examination in the first attempt. The respondents have issued a clarification dated 6.5.1994 (Ann.R/1) which stipulates that services rendered on ad-hoc basis cannot be counted for the purpose of grant of Senior/Selection Scale. The services would be counted for Senior/Selection scale only from the date of their acquiring the essential qualification. Thus, in view of this specific provision contained in the appointment letter and further clarification issued by the department, services of the applicants would be counted for the purpose of Senior/Selection Scale from the date when services were regularized on acquiring the essential qualification. We are unable to accept the contention of the applicants that services rendered by them on trial basis should be counted for the purpose of giving Senior/Selection scale.

6. The matter on this point is no longer res-integra. The Apex Court in the case of Punjab State Electricity Board and Others vs. Jagjiwan Ram and ors. (2009) 1 SCC (L&S) 769 has considered almost identical issue. In that case the respondents therein were employees of the Punjab State Electricity Board were stagnating in particular position for a long period and the issue involved was

whether the service rendered by them in work charged capacity could be clubbed with the service rendered by them after regularization for the purpose of determining their eligibility for time bound promotional scale/increment on completion of 9, 16, 23 years of service. The Apex Court held that difference has to be made between 'regular service' and 'continuous service' and the High Court has committed serious error by equating expression 'regular service' with 'continuous service'. The Hon'ble Apex Court after considering the terms and conditions of the circular held that the respondents shall be entitled for selection grade on completion of 12 years' regular service and service on temporary/ad-hoc/work charged employee cannot be counted for extending time bound promotional scale or promotional increment. The Apex Court has considered its earlier decision in the case of State of Punjab vs. Ishar Singh (2002) 10 SCC 674, State of Punjab vs. Gurdeep Kumar Uppal, 2004 SCC (L&S) 444 and State of Haryana vs. Haryana Veterinary and AHTS Assn., (2000) 8 SCC 4 and in para 19 held that ad-hoc services rendered by the respondents cannot be clubbed with their regular service for the purpose of grant of revised pay scales, senior/selection grade, proficiency step-up and for fixation of seniority. The Apex Court in para 18 has reproduced the judgment rendered by the Apex Court in the case of Haryana Veterinary case (supra) in extenso where the Apex Court has set-aside the judgment of the High Court which was contrary to the terms and conditions stipulated in the offer of appointment and held that prior service rendered by the respondents therein on ad-hoc basis cannot be

held to be a regular service nor can it be tagged on the later service for earning the benefit under the Government circulars.

7. As already stated above, in the instant case also the appointment letter unequivocally indicates that the offer of appointment to the applicants as TGT was on trial basis and services has to be treated on regular basis after declaration of the result of the teachers' training/degree/diploma examination. Further, the clarification as issued vide circular dated 6.5.1994 (Ann.R/1), point No.6 specifically indicates that services rendered on ad-hoc basis cannot be counted for the purpose of grant of Senior/Selection scale. The service should be counted for Senior/Selection scale only from the date their services were regularized on acquiring essential qualification which is in consonance with condition No. 4(v) of the offer of appointment.

8. Thus, we see no infirmity in the order dated 19.5.2004 (Ann.A/1) whereby the respondents have taken into account regular service instead of service rendered on trial basis for the purpose of grant of Senior/Selection scale. The respondents in the reply affidavit has further clarified that Senior/Selection scale granted to Shri Praveen Sharma and Smt. Pallavi Sharma has already been revised vide letter dated 27.09.2000. Simply, because some relief has been granted to some persons which matter is pending before the High Court cannot form basis for grant of relief in view of the judgement rendered by the Apex Court as noticed above, which decisions appears to have not ^{been} noticed by the

Tribunal while granting relief and thus cannot be said to be a good law.

9. For the foregoing reasons, we find no merit in this OA, which is accordingly dismissed with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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