

RESERVED ON 06.03.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **23rd** day of **March, 2018.**

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER-J

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/1038/2006

Shashi Sharma, D/o Dr. Surendra Sharma, Principal, North Central Railway Inter College, Tundla, Firozabad, Uttar Pradesh.

.....Applicant.

V E R S U S

1. Union of India through the General Manager, North Central Railway, Head Quarter Office, Allahabad.
2. The General Manager, North Central Railway, Head Quarter Office, Allahabad.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. The Chief Personnel Officer, Northern Railway, Baroda House, New Delhi.
5. The Secretary (Establishment), Railway Board, Head Quarter Office, Rail Bhawan, New Delhi.

.....Respondents

Advocate for Applicant : Shri Satish Dwivedi

Advocate for the respondents : Shri Amit Kumar Rai

O R D E R

(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)

By way of the instant original application, the applicant has prayed for following main reliefs: -

“(A) ...the respondents be directed to regularise the promotion of the applicant on the post of Headmistress

with effect from 3-3-1989 with all consequential benefits attached to the post.

- (B) ...the respondents be directed to regularize the promotion of the applicant in senior scale Rs. 3000-4500 (revised as Rs. 10000-15200) with effect from 03-03-1990 similar to Sri D.C. Pandey, Headmaster and further they be directed to pay arrears of salary in senior scale with effect from 3-3-1990 to 23-5-1999 to applicant and she be allowed all the consequential benefits attached to the said post.
- (C) ...the respondents be directed to consider and promote the applicant in Junior Administrative Grade Rs. 12000-16500/- from the date of completion of 5 years service in senior scale with all the consequential benefits attached to the post.”

2. The brief facts of the case as stated by the applicant in the O.A. are that the applicant was initially appointed as Assistant Teacher (English) in pay scale Rs. 1640-2900 in Oak Grove Senior Girls School, Jharipani, Dehradun where she joined on 06.08.1980. Thereafter, vide order dated 17.02.1989 (Annexure A-12 to the O.A) passed by the General Manager (P), Northern Railway (respondent No. 3), the applicant was promoted as Headmistress on adhoc basis w.e.f. 03.03.1989 in pay scale Rs. 2000-3500 although, according to her, she was entitled to senior scale i.e. Rs. 3000-4500/- as the post of Headmistress is a senior scale post. A letter dated 12.03.1991 (Annexure A-13 to the O.A) was issued by the respondent No. 3 to the applicant was allowed to cross efficiency bar at the stage of Rs. 2300/- in pay scale of Rs. 2000-3500/-. The applicant preferred a representation dated 02.09.1993 to the Chief Personnel Officer, Northern Railway, H.Q

Office, New Delhi (Annexure A-14 to the O.A) requesting to consider her promotion in the pay scale of Rs. 3000-4500 and for regularization of her ad-hoc promotion but this request of the applicant was not considered by the competent authority on account of pendency of O.A No. 1159/1989 filed by Mrs. Naheed Siddiqui, Assistant Teacher of the Oak Grove School challenging promotion of the applicant. After dismissal of the said O.A by the Tribunal vide order dated 25.04.1994 (Annexure A-15 to the O.A), the applicant submitted another representation in the year 1995 (Annexure A-16 to the O.A) for regularization of her ad-hoc promotion and for providing pay scale of Rs. 3000-4500 to the competent authority who in turn, informed the applicant vide letter dated 05.12.1995 (Annexure A-17 to the O.A) that the matter for promotion of the teaching staff to senior scale is under submission before the Railway Board.

3. Thereafter, the applicant submitted a representation dated 15.05.1996 (Annexure A-18 to the O.A) to the Chairman, Railway Board, New Delhi for redressal of her grievance. In the year 1997, the selection for the post of Headmaster/Headmistress in Group 'B' was conducted in which the applicant was selected and as per the letter dated 01.10.1997 (Annexure A-20 to the O.A), her name was placed in outstanding category on the panel of Headmaster / Headmistress and she was regularized as Headmistress in Group 'B' vide letter dated 16.10.1997 (Annexure A-21 to the O.A). The applicant preferred a representation dated 07.02.1998 (Annexure A-22 to the O.A) for giving seniority with effect from the date of

initial promotion on the post of Headmistress Group 'B' and also providing senior scale similar to the Miss. N.C. David and Mr. K.C. Kukreti. Vide order dated 24.05.1999 (Annexure A-24 to the O.A), the General Manager (P), Northern Railway, New Delhi promoted the applicant in senior scale for a period of one year on ad-hoc basis and she was allowed pay scale of Rs. 3000-4500 (revised pay scale Rs. 10000-15200) and the ad-hoc appointment in senior scale was extended from time to time. The applicant was transferred on 03.07.2002 from Oak Grove School, Jharipani to the post of Principal, North Central Railway Inter College, Tundla and continued on the said post in senior scale on ad-hoc basis. It is also stated in the O.A that the applicant would attain the age of superannuation in the February, 2008.

4. It is stated in the O.A that the selection for the post of Headmistress / Headmaster was held in the year 2002 and vide letter 03.05.2002 Shri D.C. Pandey, Mrs. N. Siddiqui and Miss Pushpa Kujur were selected for the said post in pay scale of Rs. 7500-12000 on permanent basis. After one year of selection i.e in June 2003, Shri D.C. Pandey was given senior scale of Rs. 10000-15200 vide order dated 28.11.2003 (Annexure A-26). Hence, the applicant preferred a representation dated 13.10.2004 (Annexure A-27 to the O.A) to the Chairman, Railway Board stating therein since there is a provision to give senior scale after one year of selection, as has been done in respect of Shri D. C. Pandey, she is also entitled for the same benefit after one year from the date of her initial promotion to the post of Headmistress i.e. w.e.f. 03.03.1990

whereas this benefit has been granted to her in the year 1999 i.e. after about 10 years. The applicant also filed a representation dated 05.10.2005 (Annexure A-28 to the O.A) before the Member Staff, Railway Board requesting therein for regularization of her promotion to the post of Headmistress with effect from 03.03.1989 and also for regularization of her promotion in senior scale and for providing the senior scale with effect 03.03.1990.

5. Having received no response from the respondents, the applicant has filed the instant original application on the ground that action of the respondents is arbitrary, discriminatory and unjustified in law. It is contended that the applicant had been illegally kept on ad-hoc capacity firstly on the post of Headmistress which was a substantive vacancy and thereafter in the senior scale of the said post whereas in the similar circumstances, in the case of Shri D.C. Pandey, Mrs. N. Siddiqui and Miss Pushpa Kujur were given regular appointment and after one year from the date of appointment, Shri D.C. Pandey was allowed senior scale through the School in which Shri D.C. Pandey was posted up to 10th Class and headmaster of the said school was not entitled for senior scale. It is also contended that the applicant was appointed / promoted on the post of Headmistress in Oak Grove School, Jharipani in substantive vacancy of Headmistress and she ought to have been given regular promotion in Group 'B' and thereafter senior scale without any selection or formality similar to Miss. N.C. David , Headmistress, Sr. Girls School and Shri K.C. Kukreti, Headmaster, Sr. Boys School. It is further stated that the action of

the respondents in making regular selection as Headmaster of Shri D.C. Pandey and providing him senior scale after one year from the date of selection and on the other hand keeping the applicant on ad-hoc in Group 'B' for about 8 years and thereafter providing senior scale after 10 years is arbitrary and discriminatory. It is further contended that as per Rule 209(D)(2) of Indian Railway Establishment Code Vol. I, the appointment to the post of Junior Administrative Grade shall be made by selection on merit from amongst the officers ordinarily with not less than 5 years service in the senior scale. Since the applicant has already completed more than 7 years service in the senior scale, she is entitled to be considered for promotion in the Junior Administrative which is being denied to her arbitrarily.

6. Since the applicant had filed a Misc. Application No. 2783/2006 accompanied with Affidavit for condonation of delay in filing O.A, the respondents filed Counter Affidavit denying the grounds for condonation of delay. It is stated that as per Section 21 of the Administrative Tribunals Act, 1985, the applicant ought to have filed the O.A immediately after one year from the date of submission of first representation, which she failed to do so. It is further stated that repeated representation will not extend the period limitation.

7. The respondents have filed a separate Counter Reply to the O.A. It is stated that the applicant was promoted in junior scale Group 'B' as Headmistress on ad-hoc basis vide order dated

17.02.1989 in pay scale Rs. 2000-3500/ 7500-12000 and was posted temporarily, after downgrading the post of Headmistress from senior scale to junior scale Group 'B' of Senior Girls School, Oak Grove School, Jharipani. It was clearly mentioned in the order dated 17.02.1989 (Annexure A-12) that the ad-hoc promotion is subject to the passing of medical examination and no D&AR/vigilance case is pending against her and she would not claim for promotion to next higher grade against her seniors in future. Later on, the applicant was empanelled for the post of Group 'B' as Headmistress as a result of her selection vide order dated 01.10.1997 (Annexure A-20 to the O.A) and she was regularized as Headmistress (Junior Scale / Group 'B' on existing post at Oak Grove School vide order dated 16.10.1997 (Annexure A-21). She was promoted against this post in Senior Scale as Principal on ad-hoc basis in pay scale Rs. 3000-4500/10000-15200 for a period of one year vide order dated 24.05.1999 (Annexure A-24) which was extended vide order dated 03.08.2000 (Annexure-2 to the CR) upto 31.12.2000 or till she retire or till the post is filled on regular basis.

8. It is stated by the respondents that Miss. N.C. David and Shri K.C. Kukreti were promoted to Senior Scale on ad-hoc basis by holding a DPC going through their ACRs and D&AR / vigilance clearance. However, a DPC proposal for regular promotion to the post of Principal in Senior Scale (Group 'A') was sent to the UPSC in 1997 by the Railway Board which was returned by the UPSC asking for certain details including the manner and occurrence of vacancies yearwise , eligibility lists etc. Since the vacancies are of past years, the information could not be furnished by the concerned zonal Railways. After receipt of information from the zonal Railways a revised DPC proposal in respect of the vacancies of those Railways have been furnished to the Board's office. The Board has

further clarified that as per the extant Recruitment Rules for appointment to Grade 'A' and Grade 'B' posts in the school of the Railways, the highest grade is in Senior Scales of Grade 'A' and there is no post in Junior Administrative Grade. The candidates, who fulfill the eligibility criteria for promotion to the post of Principal in Senior Scale of Gr. 'A' are allowed regular pay scale of the Senior Scale even on their ad-hoc promotion to the grade. Thus the applicant was not deprived of any monetary benefits.

9. The respondents have further contended that Shri D.C. Pandey, Mrs. Nahid Siddiqui and Miss Pushpa Kujur were placed on the panel of Headmistress / Headmaster (Junior Scale / Group 'B' Gr. Rs. 7500-12000) against the selection held in the year 2002 vide G.M (P), Northern Railway Letter dated 03.05.2002. However, Shri D.C. Pandey was promoted in Senior Scale on ad-hoc basis in Grade Rs. 10000-15200 vide order dated 06.02.2004 whereas, the applicant was regularized in Junior Scale / Group 'B' in the year 1997 and on getting clarification from Railway Board vide their letter dated 16.09.1998 (Annexure-6 to the CR), she was given promotion in Senior Scale Grade Rs. 10000-15200 on ad-hoc basis for one year vide order dated 24.05.1999 which was extended. It is further stated that the applicant was earlier promoted to Junior Scale / Group 'B' post purely on ad-hoc basis in the year 1989 and thereafter she was regularized as Headmistress, Junior Scale / Group 'B' in the year 1997. However, after getting clarifications from Railway Board, she was promoted to Senior Scale on ad-hoc basis in the year 1999.

10. The Rejoinder Reply and Suppl. Counter Reply have also been filed reiterating almost the facts stated in the preceding paragraphs.

11. We have heard Shri S. Dwivedi, learned counsel for the applicant and Shri Amit Kumar Rai, learned counsel for respondents . While the learned counsel for the applicant submitted that the applicant was entitled for regularization of ad-hoc promotion as Headmistress w.e.f. 03.03.1989 and senior scale promotion one year thereafter. On the other hand, learned counsel for the respondents submitted that the applicant was first promoted as Headmistress on ad-hoc basis w.e.f. 03.03.1989 and cannot be regularized as Headmistress or promoted to senior scale, unless she was selected as per the rules through the DPC. This was done in 1997 when her turn came and thereafter, she was also given senior scale on ad-hoc basis, with the usual pay scale. He further submitted that the applicant has been extended all financial benefits to which she was entitled as per rules. It was also pointed out by the respondents' counsel that the O.A is barred by limitation.

12. On the ground of delay, although objection have been filed by the respondents, but the respondents have not pressed for dismissal of the O.A on this ground. We find the reasons mentioned in the delay condonation application to be sufficient. Hence, the delay in filing the O.A is condoned to enable it to be considered on merits.

13. As stated by the respondents in their counter reply, the applicant was promoted as Headmistress of Oak Grove Senior Girls School, Jharipani w.e.f. 03.03.1989 vide order dated 17.02.1989 (Annexure A-12) clearly stating that no claim for promotion compared to her seniors on the basis of this ad-hoc promotion order can be made. It is the contention of the respondents that the applicant will be entitled for regularization as Headmistress only after her selection for the post through DPC / Selection Committee as per the rules. This was done in

1997 and she was regularized as Headmistress vide order dated 16.10.1997 (Annexure A-21) after her selection vide order dated 01.10.1997. It was stated in the counter that for regular promotion to the post of Principal in Senior Scale, a proposal was sent to UPSC, but it could not be done due to want of certain information. Hence, the applicant was given promotion to the post of Senior Scale Principal on ad-hoc basis vide order dated 24.05.1999 (Annexure A-24) which was extended till her retirement. Regarding her claim for further promotion to Junior Administrative Grade, it was stated that the Railway Board has clarified that there is no post of Principal in Junior Administrative Grade.

14. We note that the applicant has failed to furnish any rules or instructions of the Railway Board in support of her claim to be regularized as Headmistress w.e.f. 03.03.1989 when she was first promoted on ad-hoc basis after downgrading the post of Headmistress, Oak Grove Senior Girls School, Jharipani. She was duly regularized in the post after her regular selection vide order dated 01.10.1997. It is not the case of the applicant that she was not allowed the benefits as per the pay scale applicable for the post of Junior Scale Headmistress during ad-hoc service period. Hence, we are unable to accept the contentions of the applicant in support of her claim to be regularized as Headmistress in Junior Scale with effect from 03.03.1989. Accordingly, the O.A is liable to be dismissed and hence, it is dismissed. No costs.

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...