

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 296/2013
MA 1830/2014

Reserved on: 11.03.2016
Pronounced on: 17.03.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Ishwar Dutt Wadhwa
S/o late Shri Vasdev Wadhwa
R/o 42-B, JA Pocket, Hari Enclave
New Delhi-110064 ... Applicant

(Through Shri Baljit Singh, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Sachivalaya, I.P. Estate, ITO
New Delhi
2. The Secretary (Education)
Govt. of NCT of Delhi
Old Secretariat, Delhi
3. The Director of Education
Directorate of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi ... Respondents

(Through Sh. Anmol Pandita for Sh. Vijay Kumar Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed as Assistant Teacher by the Municipal Corporation of Delhi (MCD) and he joined his duties with effect from 19.09.1973. He was offered a temporary post of Trained Graduate Teacher (TGT) (English) vide memorandum

dated 25.11.1992 issued by the Deputy Director of Education which post he joined on 19.01.1993. It is stated that the applicant is a Graduate in English and holds the qualification of Bachelor of Education but he does not hold any Post Graduate degree. Vide order dated 12.08.1987, Ministry of Human Resource Development (Department of Education) communicated to the Chief Secretary, Delhi Administration, the Chief Commissioner, Andaman and Nicobar Administration, the Administrator, Union Territory of Lakshadweep, The Chief Secretary, Government of Pondicherry, The Administrator, Union Territory of Daman and Diu and the Administrator, Dadra and Nagar Haveli Administration, Silvassa the revised pay structure of school teachers with effect from 1.01.1986 including upgradation to a senior scale on completion of 12 years of service as TGT. The provision of granting senior scale to such teachers was withdrawn with effect from 9.08.1999.

2. Learned counsel for the applicant states that the grant of senior scale was irrespective of holding any qualification of post graduation. With effect from 9.08.1999, the Government of India introduced Assured Career Progression Scheme (ACPS), which was made applicable to Government of National Capital Territory of Delhi (GNCTD), Directorate of Education through circular dated 25.08.2003 with effect from 9.08.1999. This was an anti-stagnation measure and under the Scheme, first and second financial upgradation was to be given after completion of 12/24 years of service on or after 9.08.1999 from the date of appointment subject to certain conditions. From the date the

ACP was introduced i.e. 9.08.1999, the aforesaid senior scale had been withdrawn. However, no recovery was undertaken by the respondents from those who had enjoyed the senior scale till the notification was issued on 25.08.2003. As such, the teachers of the category of the applicant, who were TGT but were not holding the qualification of post graduation, were granted upgradation till 25.08.2003 as there was no such requirement of qualification of post graduation for grant of senior scale.

3. It is stated that with effect from 1.09.2008, the respondents introduced the Modified Assured Career Progression Scheme (MACPS) vide Department of Education circular dated 19.08.2009. The applicant retired on 31.01.2007.

4. According to the applicant, neither prior to the date of introduction of ACP i.e. 25.08.2003 nor after introduction of MACP with effect from 1.09.2008, the condition of having qualification of post graduation for promotion to the post of Post Graduate Teacher (PGT) was there for grant of senior scale or for first upgradation but he has been denied the benefit though he has worked for a period of more than 14 years as TGT. It has been alleged that he could not get any upgradation either by way of senior scale or ACP. Being aggrieved, he has filed the instant OA seeking the following reliefs:

"In view of the facts and circumstances stated herein above, the applicant prays that this Hon'ble Tribunal may graciously be pleased to direct the respondents to grant one financial upgradation by granting Senior Scale/ ACP to the applicant from the date

19.01.1995 on which he had completed 12 years of service as T.G.T. and pay the arrears of pay/ pension after revision fixation of pay & allowances and pension as well accordingly."

5. The applicant has filed representations before the authorities, which were considered and rejected vide letter dated 31.12.2011 stating the following:

"To

The Education Officer
Zone - 15
Distt West 'A'
Karampura

Subject - Non Grant of Senior Scale/ACP

Sir/Madam,

Reference to the letter vide No.4127 dated 25/11/2011 given by Sh. Ishwar Dutt Wadhwa TGT (Eng) Retd. S/o Late Shri Vasdev Wadhwa. It is submitted that :

1. Sh. I.D. Wadhwa joined the Govt. Service as Asstt. Teacher on 19/09/1973 in MCD.
2. He was promoted as TGT (Eng) in Dte. of Edu. on 19.01.1993.
3. He completed 12 years of service as same grade/post on 19.01.2005 but he did not fulfill the norms of ACP Scheme at that time because he was not Post Graduate. So he was not granted ACP scheme benefit.
4. Further it is mentioned here that the senior scale was withdrawn by the Deptt. in year 2003.
5. At the time of retirement on 31/01/2007 of Sh. I.D. Wadhwa, the new MACP Scheme was not implemented in the Deptt. It was implemented w.e.f. 1st Sept. 2001 replacing earlier ACP Scheme. So, he was not entitled for MACP."

6. The respondents, first of all, raised the issue of limitation stating that the prayer of the applicant is for grant of senior scale/ ACP with effect from 19.01.1995 and that the applicant has also retired on 31.01.2007. Moreover, the rejection letter is

dated 31.12.2011 and the applicant has approached this Tribunal only on 10.01.2013 with delay. Citing several judgments of the Hon'ble Supreme Court in **State of Punjab Vs. Gurdev Singh**, (1991) 4 SCC 1, **UOI Vs. Ratan Chandra Samanta**, JT 1993 (3) SC 418 and **Harish Uppal Vs. UOI**, JT 1994 (3) SC 126, the respondents claim that this OA is not maintainable.

7. The respondents reply states that the applicant joined the Directorate of Education on 19.01.1993 on promotion from MCD. It is stated that the applicant was neither eligible for senior scale nor upgradation under the ACPS, as he did not hold a post graduate degree, which is the required basic qualification for next higher post under the 1987 guidelines as well as ACP guidelines that required the teachers must have obtained higher qualification as per para 3 (v) of circular dated 12.08.1987 (Revision of pay scales of School Teachers) and para 2 (iii) and para 11.1 of circular dated 25.08.2003 introducing ACPS. It is further stated that as the MACPS was introduced with effect from 1.09.2008 and the applicant retired on 31.01.2007, he is not eligible for the benefit of MACPS.

8. We have heard the learned counsel for the parties and gone through the pleadings available on record.

9. First of all, we take up the issue of delay. The applicant states that when his representations were rejected vide order dated 31.12.2011, he filed the OA on 10.01.2013 under the bonafide understanding that it has been filed within the prescribed period of limitation. However, since the respondents

have raised the question of limitation and citing several judgments of the Hon'ble Supreme Court he filed petition for condonation of delay in which he has cited several judgments of the Apex Court such as **New India Insurance Co. Ltd. Vs. Shanti Misra**, (1975) 2 SCC 840, **Milavi Devi Vs. Dina Nath**, (1982) 3 SCC 366 and **O.P. Kathpalia Vs. Lakhmir Singh**, (1984) 4 SCC 66 contending that the Hon'ble Supreme Court has held that certain amount of latitude is permissible on the issue of delay. We feel that though the matter is old, ultimately the respondents rejected the prayer of the applicant vide order dated 31.12.2011 and thereafter the OA was filed on 10.01.2013 i.e. 10 days beyond the limitation period of one year. Therefore, in the interest of justice, we feel that delay can be condoned and the matter was thus heard on merits.

10. As stated by the respondents, para 3 (v) of the circular dated 12.08.1987 pertaining to revision of pay scales as well as para 2 (iii) and para 11.1 of circular dated 25.08.2003 introducing ACPS make it absolutely clear that the benefit of senior scale or ACPS would be granted only if the incumbents obtain the necessary higher qualification. In this case, the applicant himself admits that he is a Graduate in English and holds the qualification of Bachelor of Education but does not hold post graduate degree. Therefore, the impugned letter dated 10.11.2011 is perfectly in order and no case for interference is made out. The question of upgradation under MACPS does not arise as the applicant retired on 31.01.2007 i.e. before the

MACPS came into effect on 1.09.2008. The OA, therefore, does not succeed and is dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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