

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1206/2013

Reserved on: 03.09.2015
Pronounced on: 11.09.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

Sh. Suresh Chand Goel
S/o Late Sh. Mool Chand,
R/o D-10, Old Seema Puri,
Delhi – 110 095.Applicant

(By Advocate: Shri Prakash Khanderwal)

Versus

North Delhi Municipal Corporation
Through the Commissioner,
Civic Centre, Minto Road,
New Delhi-110 002.Respondent

(By Advocate: Ms. Alka Sharma)

O R D E R

By Hon'ble Mr. P.K. Basu, Member (A):

The applicant was appointed as Assistant Teacher in the Municipal Corporation of Delhi on 18.07.1960. He was promoted as Headmaster on 01.05.1987 in the pay scale of Rs.1640-2900.

2. According to the applicant, as per Office Order No.11 dated 02.07.1990, it was noted that when such Assistant Teachers in the senior scale get promoted as Headmaster (both carrying pay scale of Rs.1400-2600 at that point of time), such Assistant Teachers carrying senior scale are deprived of financial benefits on promotion. Through this Office Order, it was clarified that the

post of Headmaster definitely carries higher responsibilities than that of Assistant Teachers and, as such, their pay would be fixed under the relevant rules accordingly. According to the applicant, MCD issued a Circular dated 26.07.2000 in which it was stated that for benefit of fixation of pay under FR 22(I)(a)(1), following two conditions are to be satisfied:-

- (i) *The employees should shoulder higher responsibilities;*
- (ii) *The promotion cadre should be in the higher scale compared to the lower scale from which the employee was promoted.*

The applicant contends that in view of the above clarification, he should have got the benefit of pay under FR 22(I)(a)(1). It is submitted by the applicant that one similarly placed Teacher, namely, Sh. Dal Chand, who approached the Tribunal in TA No.483/2009 decided on 08.12.2009, got the benefit from the respondents vide order dated 14.12.2010. The applicant, therefore, submits that as per the aforesaid Tribunal's order, he is also entitled to get his pay fixed in the pay scale of Rs.2000-3500/- w.e.f. 01.01.1988 which he was deprived. The applicant further stated that he had made representations before the respondents but they took no decision in this regard. Being aggrieved, the applicant, by way of the instant OA, has prayed for a direction to be issued to the respondents to make payment of arrears of difference between the pay scale of Rs.1640-2900 and Rs.2000-3500/- w.e.f. 01.01.1988 till 31.12.1995, from

01.01.1996 till the date of retirement i.e. 30.04.2000 in the pay scale of Rs.7500-12000/- in place of Rs.6500-10500/-, and all corresponding retirement benefits.

3. In their reply, the learned counsel for the respondents has raised the preliminary objection of limitation stating that the cause of action arose for the applicant on 15.12.2010 and the OA was, therefore, required to be filed within one year thereafter i.e. on or before 14.12.2011, whereas the instant OA has been filed on 03.04.2013. Hence, the OA is barred by limitation. The second objection raised by the respondents is that the applicant has approached the Tribunal without exhausting remedies as provided for under Section 20 of the Administrative Tribunals Act, 1985. On the merits of the case, it is stated that since the post of Headmaster is not in a promotional scale, the provision of benefits of FR 22(I)(a)(1) will not apply. As regards the case of Sh. Dal Chand, it is stated by the respondents that he was given the benefit on the basis of Tribunal's order passed in TA No.483/2009, but this was reviewed and the benefits granted to Sh. Dal Chand were later on rectified and withdrawn by the department. On the other hand, we find from the MA No.2187/2010 filed in TA No.483/2009 that the respondents have paid a sum of Rs.2,20,420/- to Sh. Dal Chand. It is further stated that the pay scale of Rs.2000-3500 was the selection grade for Headmasters, who have rendered 24 years of service in

the same capacity, and since the applicant has not rendered the requisite service of 24 years, he is not entitled to the scale of pay of Rs.2000-3500/-.

4. It appears from certain note-sheets (upto June, 2012) filed with the OA by the applicant that the respondents were aware of the representation made by the applicant regarding his claim for the same benefits as had been granted to Sh. Dal Chand, and some examination had also taken place on file, but there was no finality. Therefore, it is not correct to state by the respondents that the applicant had not tried to exhaust alternative remedies. It is only when the department did not take any action, he had to approach the Tribunal. Due to this, we also do not find much merit in the preliminary objection of the respondents qua limitation. Had the respondents attended to his representation in time, matter would have been different. Though the applicant has not filed a copy of his representation, yet in light of the respondents' note-sheets filed by him, it would be in the interest of justice to dispose of the instant OA with direction to the applicant to file a fresh detailed representation to the respondents within a period of a fortnight, and the respondents, in turn, would consider the same, if filed, within a period of two months thereafter. It is made clear that while deciding the representation of the applicant, the respondents would examine the applicant's case viz-a-viz the case of Sh. Dal Chand as well as

the Tribunal's order passed in TA No.483/2009, and pass a reasoned and speaking order thereon under intimation to the applicant.

5. With the above order, the instant OA stands disposed of with no order as to costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

/Ahuja/