

**Central Administrative Tribunal
Principal Bench
New Delhi**

**OA No.1562/2017
MA No2800/2017**

This the 6th day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Mr. Vandana Panwar W/o Anil Dhaka
D/o Virender Pal,
PGT/Lecturer (English),
R/o FU-56, Vishakha Enclave,
Pitampura, Delhi-110034.
School Address:
Emp. ID No.20080257,
Sarvodaya Vidyalaya, FU-Block,
Pitampura, Delhi.

... Applicant

(By Advocate: Mr. K. P. Gupta)

Versus

1. Government of NCT of Delhi through its Secretary (Education), Old Secretariat, Delhi.
2. Director of Education, Government of NCT of Delhi, Directorate of Education, Old Secretariat, Delhi.
3. Deputy Director of Education, Government of NCT of Delhi, Office of Deputy Director of Education, District North-West-A, BL Block, Shalimar Bagh, Delhi-110088.
4. Deputy Director of Education, Government of NCT of Delhi, Office of Deputy Director of Education, District North-West-B, FU Block, Pitampura, Delhi-110034.

5. Principal/Head of School,
RPVV, BT Block, Shalimar Bagh,
Delhi-110088.

6. Principal/Head of School,
Sarvodaya Vidyalaya,
FU Block, Pitampura,
Delhi-110034.

... Respondents

(By Advocate: Mr. Vijay Pandita)

O R D E R

Justice Permod Kohli, Chairman :

MA No.2800/2017

This MA has been filed seeking condonation of delay of 306 days in filing the OA. The applicant has sought quashment of the memorandum/order dated 18.06.2015 with further direction for stepping up of her pay w.e.f. 01.07.2008 at par with her junior, namely, Smt. Mamta Meena.

2. The plea of the applicant seeking condonation of delay is that the applicant made a representation against the grant of higher pay to her junior, namely, Smt. Mamta Meena, vide her application dated 04.11.2014, seeking benefit of increment at par with her junior. This application came to be rejected vide impugned order dated 18.06.2015. The applicant thereafter filed another representation against the aforesaid order to the Director of Education with copy to the School Principal, with new facts. The School Principal, i.e., respondent No.5, forwarded the same to the office of Director of

Education. It is mentioned that the file remained moving from one office to another, as is evident from Annexure A-11, which is the noting from the file. The file was accordingly returned to the School and received by the Principal on 08.07.2016. The applicant was given photo copy of the same on 11.07.2016. It is stated that the applicant *bona fidely* believed that limitation would start from 08.07.2016, and hence this OA was filed on 02.08.2017. The applicant has also placed on record minutes of the meeting, which indicate that the file was returned to the concerned on 27.06.2016, and to the School on 08.07.2016. The application is duly supported with an affidavit.

3. Apart from that, the claim for increments, which is part of the salary, is a recurring cause of action.

4. For the above reasons, this MA is allowed. Delay in filing the OA is hereby condoned.

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5. This OA under Section 19 of the Administrative Tribunals Act, 1985 has been filed seeking following reliefs:

- a. To quash and set aside the Memorandum/order dated 18.06.2015 (Annexure-A).
- b. To direct to step up the pay of the applicant equal to her junior Smt. Mamta Meena w.e.f. 01.07.2008 by granting her an increment payable to her w.e.f. 01.07.2008.

- c. Direct the respondent to pay all her arrears whatsoever fell due with interest @ 12% per annum.
- d. Any other or further relief which this Hon'ble Court deems fit, just and proper in the peculiar circumstances of the case in interest of justice may also please be awarded.
- e. Award the cost of the present proceedings."

6. The facts relevant for purposes of the present OA are being noticed hereinafter.

6.1. The applicant as also one Smt. Mamta Meena applied for the post of PGT/Lecturer in Schools run by the Directorate of Education, Government of NCT of Delhi in response to advertisement No.02/2006. Both of them were selected. The applicant was issued offer of appointment vide letter dated 19.07.2007 and asked to produce all documents relating to educational qualification and proof of age etc. on 07.08.2007. The applicant produced all the relevant documents as directed. The applicant as also Smt. Mamta Meena were medically examined at Deen Dayal Upadhyay Hospital, Delhi. The applicant was declared medically fit on 05.10.2007 and Smt. Mamta Meena was found medically fit on 09.10.2007. Letter of appointment was issued to Smt. Mamta Meena on 07/08.11.2007 (Annexure-A4). She joined the said post of PGT/Lecturer (Economics) on 19.11.2007. However, no letter of appointment was issued to the applicant for want of some

clarification regarding her age, as was later revealed through RTI query. It is stated that the applicant was fully eligible and within the prescribed age, but her appointment was withheld and delayed. The appointment letter was finally issued to the applicant on 28.02.2008, which was received by her on 04.03.2008, and accordingly the applicant joined the post of PGT (English) at Sarvodaya Kanya Vidyalaya, Burari, Delhi on 04.03.2008 itself (Annexure-A8).

6.2. A final seniority list of PGTs/Lecturers (Female) promoted/appointed between 01.04.2006 and 31.03.2010 was issued vide circular dated 19.07.2013. The applicant was placed at seniority number 3235, whereas Mamta Meena was placed at serial number 3279 in the said seniority list. The seniority list was prepared on the basis of the comparative merit of the candidates. On issuance of the aforesaid seniority list, the applicant made an application dated 06.11.2013 to the respondent No.5, the School Principal, to step up her pay equal to Smt. Mamta Meena who was junior to her. The respondent No.5 forwarded the case of the applicant to the office of respondent No.3, giving comparative statement of both the PGTs. The file remained pending and vide letter dated 18.06.2015 (Annexure-A) the claim of the applicant was rejected. The said letter reads as under:

“Sub: Reg. Implemtnation of increment from July 2008.

Reference her application dated 04/11/2014 received in this office on 07/11/2014 on the subject cited above. In this connection, it is to inform you that your case for implementation of increment from July 2008 was submitted before the Competent Authority for consideration.

The Competent Authority has opined that as per revised Pay Rules "Qualifying period for earning an increment is 6 (six) months on 1st July." Whereas Smt. Vandana Panwar, Lecturer (English) has joined the new post on 04/03/2008 due to which she is not entitled for the increment as per aforesaid rules. This is for your information please."

It is stated that the respondents did not appreciate the rule in right perspective. The applicant accordingly made another representation dated 06.10.2015 to the Director of Education (respondent No.2) with copy to the School Principal (respondent No.5) for removal of the anomaly in pay with other batch-mates junior to her by way of grant of increment w.e.f. 01.07.2008. It was also mentioned that the delay in appointment of the applicant was on account of verification of the age, even though the proof of age was available with the respondents.

7. It is argued by Mr. K. P. Gupta, learned counsel appearing for the applicant that delay in appointment is not attributable to the applicant and thus, the ground for denying the increment to the applicant is not sustainable in law. The second representation of the applicant was also not considered, as is evident

from the notings on the file. Accordingly this OA has been filed seeking the reliefs mentioned hereinabove.

8. In the counter-affidavit, the claim of the applicant is firstly resisted on the ground of delay in filing the OA. Referring to the judgment of the Apex Court in case of *State of Punjab & others v Gurdev Singh* [(1991) 4 SCC 1] and some other judgments, it is stated that the delay defeats remedy and the court should help those who are vigilant. Insofar as the factual background narrated hereinabove is concerned, these are not disputed. The respondents have, however, referred to the Revised Pay Rules wherein the qualifying period for earning an increment is six months as on 1st July. It is accordingly stated that since the applicant joined on 04.03.2008, she was not having qualifying period of six months to her credit as on 01.07.2008 and she is not entitled to increment, whereas in case of Smt. Mamta Meena, she having qualifying period of six months as on 01.07.2008, was granted the increment.

9. We have heard the learned counsel for parties. Admittedly, the applicant was selected along with Smt. Mamta Meena in the same selection process, wherein merit of the applicant was higher than Smt. Mamta Meena. The offer of appointment was given to both of them simultaneously, i.e., on 19.07.2007. The applicant was even medically examined earlier than Mamta Meena.

However, on account of delay in verification of the age of the applicant, she could be appointed on 04.03.2008, whereas Mamta Meena was appointed on 07/08.11.2007, and she joined on 19.11.2007, i.e., earlier than the applicant. Notwithstanding the joining of the applicant on a date later than Mamta Meena, her seniority was fixed over and above Mamta Meena, and rightly so, on the basis of their respective merits in the process of selection. This fact is not disputed by the respondents. The only stand of the respondents to deny the salary at par with the junior to the applicant, is that the applicant could not have earned increment, she having less than six months service as on 01.07.2008, whereas her junior Mamta Meena was granted increment as she was having more than six months service as on 01.07.2008. Thus, it is only because of non-payment of one annual increment to the applicant that the pay of the junior is more than the applicant. Assuming it to be so, the applicant is still entitled to the salary at par with her junior in view of the law laid down by the Apex Court in cases of *Gurcharan Singh Grewal v Punjab State Electricity Board* [(2009) 3 SCC 94]; *Punjab State Electricity Board v Gurmail Singh* [(2008) 7 SCC 245]; and *Commissioner and Secretary to Government of Haryana v Ram Sarup Ganda* [(2011)15 SCC 772], wherein it is held that the principle of stepping up of pay has to be applied across the board in all cases where a person who is senior gets less salary than his junior, requiring the salary of the senior to be

stepped up and brought at par with the junior. Relying upon the aforesaid judgments of the Hon'ble Supreme Court, the Hon'ble High Court of Delhi in *Government of NCT of Delhi and others v Saroj Khosla and others* reported as (2013) 199 DLT (CN) 27 (DB) directed that the respondents would be entitled to stepping up of pay at par with the pay received by persons immediately junior to them in the combined seniority list. In the case before the Hon'ble High Court, the Staff Selection Board constituted by the Director of Education, Delhi Administration, notified 654 vacancies in various disciplines of Trained Graduate Teachers in the year 1984. However, on completion of the selection process, names of 1492 candidates were notified as having been selected, and an announcement/assurance was displayed on the notice board that the appointment would be made from the select list till the last candidate is appointed. In due course, the Delhi Administration gave appointment to the remaining empanelled candidates and the period of giving such appointments stretched over three to four years. The empanelled candidates who got employment as also their seniority started claiming stepping up of pay/back-wages from the year 1984 onwards. The basis of their claim was that but for the department depriving them of the opportunity to serve, they would have served and earned wages. On their claim for back-wages being rejected by the Administration, various OAs came to be filed before this Tribunal. However, the

Tribunal declined the claim for back-wages holding that having not worked the claimants could not be paid back-wages/stepping of pay.

The Hon'ble High Court, relying upon the aforesaid judgments of the Apex Court, made following observations/directions:

“23. Following the law declared by the Supreme Court in the afore-noted three decisions we find that the only corrective action which is required to be taken by us is to dispose of the writ petitions directing that the respondents would be entitled to their pays being stepped up and brought at par with the pay received by persons immediately junior to them in the combined seniority list; and to be received by the respondents from the date they joined service.”

The mandate of the aforesaid judgments clearly provides that where the salary of junior is higher than the senior, the senior shall also be entitled to fixation of salary at par with the junior, irrespective of the circumstances under which the junior was/is drawing higher pay. The claim of the applicant has been wrongly denied.

10. Delay in filing the OA has already been condoned by passing order in MA No.2800/2017. Thus, the contention of the respondents for dismissal of the OA on account of limitation is liable to be rejected.

11. In the light of the above circumstances, this OA is allowed. The impugned memorandum dated 18.06.2015 is hereby quashed. The respondents are directed to fix the salary of the

applicant at par with Smt. Mamta Meena w.e.f. 01.07.2008. The applicant shall be entitled to the arrears with effect from the said date. Let the arrears be calculated and paid to the applicant within a period of three months from the date of receipt of copy of this order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/