

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1081/2013

With

OA No.48/2012

Order Reserved on: 03.05.2017

Pronounced on:12.05.2017

Hon'ble Mr. Raj Vir Sharma, Member (J)

Hon'ble Mr. K.N. Shrivastava, Member (A)

OA No.1081/2013

Usha Kathuria,
C/o Nirupma Taneja,
R/o D-50, Ground Floor,
Lajpat Nagar, New Delhi
Also at A-291, Surya Nagar,
Sahibabad,
Ghaziabad, U.P.

- Applicant

(By Advocate Shri Yatendra Sharma)

-Versus-

1. NCT of Delhi through its
Chief Secretary, Old Secretariat,
Delhi.
2. Director of Education,
Directorate of Education,
Zone-1, Rani Garden,
Geeta Colony,
New Delhi.
3. Deputy Director of Education,
District East,
D-Block, Anand Vihar,
Delhi.

- Respondents

(By Advocate Shri Pradeep Kumar and Shri Vijay Pandita)

OA No.48/2012

Jai Narain Kaushik
S/o Late Sh. R.D. Kaushik
R/o 76, Surya Niketan, Delhi
Also at
A-15, Ramprastha Colony,
PO Chandra Nagar, Sahibabad,
Ghaziabad (UP).

-Applicant

(By Advocates: Shri Yatendra Sharma)

Versus

1. Govt. of NCT of Delhi through Chief Secretary,
Old Secretariat, New Delhi.
2. Director of Education,
Directorate of Education,
Old Secretariat, New Delhi.
3. Deputy Director of Education,
District East, D-Block,
Anand Vihar, Delhi.

Respondents

(By Advocates Shri Pardeep Kumar and Shri Vijay Pandita)

ORDER

Mr. K.N. Shrivastava, Member (A):

As common questions of law and fact are involved in these two Original Applications, with the consent of the parties, we proceed to dispose them of through this common order.

OA No.1081/2013

The applicant, through the medium of this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:

A. Quash the Order No.F.DE.47/DDE/EAST/201082.87 dated 23-1-13 passed by the Respondent No.3.

B. Direct the Respondent to grant actual pay of Principal i.e. Rs.10000-15200 (pre-revised) from April 2002 till his retirement during the period, the Applicant in the capacity of Vice Principal was declared Head of School (HOS) till her retirement on 31.7.08.

C. Direct the Respondents to treat the Applicant at par with similarly situated persons who have been granted similar relief by this Hon'ble Tribunal in OA No.1171/10 dated 12.4.10.

D. Direct the Respondent to fix the Pension of the Applicant under the Pay scales of Rs.10000-15200 (pre-revised) after computing the last salary before retirement.

E. Grant arrears of pay after calculating the same at pay scale of Rs.10000-15200 (pre-revised) with effect from 5-4-06 till 31-7-08 alongwith interest.

F. Grant arrears of pension calculated at the pay scale of Rs.10000-15200 (pre-revised) with interest.

G. Grant all the other financial benefits as admissible and permissible under order dated 22-10-08."

2. The brief facts of this case are as under:

2.1 The applicant joined as a Language Teacher in the year 1966 at Bhartiya Mahila School, Shahdara, Delhi, which comes under the Directorate of Education, Government of National Capital Territory of Delhi (GNCTD). She was promoted as Post Graduate Teacher (PGT) in 1969. She was further promoted as Vice-Principal on 01.12.1999 and posted at Government Girls Senior Secondary School (GGSSS), Jhilmil, Delhi. Vide Annexure A-2 order dated

01.03.2001 she was declared as Head of School (HOS) of the said school w.e.f. 01.12.1999. She finally retired from the post of Vice-Principal on attaining the age of superannuation on 31.07.2002 as per Annexure A-3 order dated 26.02.2002 issued by respondent no.3.

2.2 The GNCTD vide Annexure A-4 order dated 22.10.2008, on the recommendations of the Departmental Promotion Committee (DPC), promoted as many as 176 ad hoc Principals/Vice-Principals to the posts of Principal, on officiating basis in the pay scale of Rs.10000-325-15200 (pre-revised). The said order also stipulates that these promotions will have only prospective effect even in cases where vacancies related to earlier years. It further stated that due to Review DPC of 2000-01 to 2002-03, the recommendations of the DPCs held in the months of September-October, 2001 and June, 2003 stand modified to the extent as shown in the said order. It further declared that officials who are already working as Principals after the recommendations of the DPCs convened earlier than September-October, 2001 and June, 2003 against these vacancies will not be entitled to any financial benefits. The applicant figured at serial no.83 of the promotion order (seniority no.840). It also indicated that the applicant has been promoted against the vacancy year 2001-02.

2.3 One Shri Gauri Shankar Sharma, who was at serial no.291 of Annexure A-4 promotion order, approached this Tribunal in OA no.809/2009, seeking financial benefits with retrospective effect vis-a-vis the Annexure A-4 promotion order, which stipulated that promotions will have only prospective effect even in cases where the vacancies relate to the earlier years. The said OA was allowed. The Tribunal vide its order dated 05.02.2010 in the *ibid* OA, issued the following directions:

“The Respondents are directed to fix correct salary of the Applicants from the dates each one of them has been promoted notionally to the aforesaid post and pay the arrears of salary for the period they were in service and revised retirement benefits after their retirement with six per cent interest on the arrears. The aforesaid directions would be complied with within four months from the date of receipt of a certified copy of this order.”

2.4 Likewise, another similarly situated official, Shri Vijay Kumar, who retired on 31.07.2007 and who was declared as HOS w.e.f. 12.05.2003 also approached this Tribunal in OA No.1171/2010, seeking similar reliefs. The said OA was disposed of vide order dated 12.04.2010 (Annexure A-6) in terms of the judgment of the Tribunal in **Gauri Shankar Sharma** (supra).

2.5 The applicant represented to respondent no.2 on 06.08.2010 stating that w.e.f. 01.12.1999, she has been officiating as Vice-Principal/HOS and thus in terms of Annexure A-4 order, she should be given all financial benefits with effect from the date of

occurrence of the vacancy against which she was promoted, i.e., w.e.f. 01.04.2001. According to the applicant, since her representation dated 22.10.2008 was not acted upon, she made another representation dated 25.05.2011. This representation too did not get any response from the respondents. Consequently, she filed OA No.1991/2012 before this Tribunal, which was disposed of at the admission stage itself vide order dated 01.06.2012 with the following direction:

“4. In view of the above limited prayer of the applicant, we dispose of this OA at the admission stage itself, by directing the respondents to look into the pending representation of the applicant and decide the same keeping in view the decision in the abovementioned OAs, within a period of six weeks from the date of receipt of a copy of this order. The decision so taken by the respondents shall be communicated to the applicant through a reasoned and speaking order.”

2.6 In obedience of the aforementioned direction of the Tribunal's order dated 01.06.2012 in OA-1991/2012, the respondents have passed the impugned Annexure A-1 order dated 23.01.2013 rejecting the representation of the applicant dated 25.05.2011. The grounds for rejection of the claim of the applicant in the impugned order are broadly as under:

a) Annexure A-4 promotion order was issued on 22.10.2008. The applicant approached the Tribunal after four years from the date of the said order and after ten years from the date of her

retirement in 2002 and hence her case is barred by delay and laches.

b) FR-17 says that an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

c) As per FR 49 (iv) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

d) As per Rule 49 of the CCS (Pension) Rules, 1972 in case of Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than thirty three years, pension is calculated with reference to average emoluments, namely, the average of the basic pay drawn during the last 10 months of the service or last basic pay drawn whichever is beneficial. The applicant has not drawn the last pay in the pay scale of Principal and hence her pay cannot be fixed as per FR-17.

2.7 Aggrieved by the impugned order, the applicant has filed the instant OA, praying for the reliefs as indicated in para-1 supra.

2.8 The applicant joined as Trained Graduate Teacher (TGT) (Science) on 07.03.1972 in GBMS, Jheel Khurenja, Delhi, which comes under the Directorate of Education, GNCTD. He was promoted to the post of Post Graduate Teacher (PGT) (Chemistry) on 06.09.1990. Thereafter he was promoted as Vice-Principal on 04.07.2006 and was posted at GBSSS, Joga Bai, Batla House, Jamia Nagar, New Delhi. He was declared as Head of School (HOS) vide order dated 04.07.2006 (Annexure A-1). He was transferred to GBSB Kalyanvas, Delhi on 16.04.2008. He retired from the service on 31.07.2008 on attaining the age of superannuation. His contention is that since he has performed the duties of HOS from 04.07.2006 to 15.04.2008 in GBSSS, Joga Bai, Batla House, New Delhi he is entitled to the benefits flowing from Annexure A-4 order dated 22.10.2008, whereby several ad-hoc Principals/Vice-Principals have been promoted to the posts of Principal on officiating basis. The applicant has also cited the case of Shri Vijay Kumar (OA No.1171/2010), who is stated to be identically placed and had worked as HOS from 12.05.2003 to 31.08.2007, i.e., till his date of retirement. Shri Vijay Kumar had approached this Tribunal in OA No.1171/2010, which was disposed of vide order dated 12.04.2010 in terms of the Tribunal's order in OA No.809/2009 –

Gauri Shankar Sharma & Ors. v. Lt. Governor of Delhi and Ors.,

and thus was granted financial benefits with retrospective effect.

2.9 The applicant had submitted a representation dated 21.04.2011 in regard to grant of difference of pay of the posts of Principal and Vice Principal for the period when he had performed the duties of HOS. As there has been no response from the respondents he has filed this OA, seeking the following reliefs:

“A. Direct the Respondent to grant actual pay of Principal i.e. Rs.10000-15200 (pre-revised) from April 2006 till his retirement during the period, the Applicant in the capacity of Vice Principal was declared Head of School (HOS) till his retirement on 04.05.06.

B. Direct the Respondent to fix the Pension of the Applicant under the Pay scales of Rs.10000-15200 (pre-revised) after computing the last salary before retirement.

C. Grant arrears of pay after calculating the same at pay scale of Rs.10000-15200 (pre-revised) with effect from 5-4-06 till 31-7-08 alongwith interest.

D. Grant arrears of pension calculated at the pay scale of Rs.10000-15200 (pre-revised) with interest.

E. Grant all the other financial benefits as admissible and permissible under order dated 22-10-08.”

3. Since the facts of these two OAs are almost similar and the applicants in these OAs have prayed for identical reliefs, for the sake of convenience and brevity, the facts from OA No.1081/2013 are taken for adjudication of these two OAs.

4. The applicants have been primarily seeking extension of the benefit of the order of this Tribunal dated 05.02.2010 in OA

No.809/2009 –**Gauri Shankar Sharma & Ors. v. Lt. Governor &**

Ors. There were six applicants in OA No.809/2009. Their grievance was that they had worked as Principals and HOSs during various years. Their cases for promotion were, however, considered by the DPC after retirement. Based on the DPC recommendations, they have been promoted vide order dated 22.10.2008 but have been denied financial benefits by the said order. They had sought a direction to the respondents that they should be given the benefit of pay scale of the post of Principal from the date(s) when they were given the charge of the post of Principal and HOS. Further, they should be given arrears of pay and allowances and consequent pay fixation from retrospective effect as also retiral benefits accordingly. They had further contended that while they were in service they were denied regular promotion to the post of Principal on the ground that vacancies in the post of Principal were not available against which they could be accommodated. The respondents reassessed the vacancies in the cadre of Principal after the retirement of applicants and when they found that vacancies indeed existed in the post of Principal, they were considered for promotion and finally promoted vide order dated 22.10.2008 but notionally. The Tribunal after adjudicating OA No.809/2009, vide order dated 05.02.2010 directed the respondents that the applicants should be paid arrears

of salary for the period when they were in service with 6% interest on the arrears and revise their retiral benefits.

5. The applicants in the instant OAs have further contended that another official namely Shri Vijay Kumar had approached this Tribunal in OA No.1171/2010 praying for the same relief that was given to the applicants in OA No.809/2009 in the case of **Gauri Shankar Sharma** (supra) and the Tribunal was pleased to grant the same benefits to Shri Vijay Kumar vide order dated 12.04.2010 in OA No.1171/2010. The applicants' contention is that they are identically placed with the applicants in OA No.809/2009 and OA No.1171/2010 and as such are entitled for the similar reliefs.

6. Per contra, the respondents in their reply have contended that the applicants are not entitled to the reliefs prayed for by them and have sought dismissal of the OAs primarily on the following grounds:

i) This Tribunal in OA-3479/2011 – **Mrs. Manorama Bhatnagar & Others v. Govt. of NCT of Delhi**, vide judgment dated 21.03.2012 has observed that the applicants therein were seeking benefits only on the strength of discharging the duties of HOS although they were working in the substantive capacity of Vice-Principal. None of their juniors were promoted to the exclusion of

their rightful claim to the promotional post. Further the possibility of seniors raising claim of equal pay cannot be ruled out if the claims of junior employees are allowed after lapse of so many years without examining the issue of limitation. As such the reliefs prayed for were declined to the applicants therein.

ii) The Hon'ble Supreme Court in a catena of judgments has laid down law that an aggrieved has to approach the Court within the statutory period prescribed (**State of Punjab v. Gurdev Singh**, (1991) 4 SCC 1, **Ratan Chandra Samanta v. Union of India**, JT 1993 (3) SC 418 and **Union of India v. M.K. Sarkar**, (2010) 2 SCC 59).

iii) The applicants have approached this Tribunal after four years from the date of the promotion order dated 22.10.2008 and almost 10 years and five years respectively from the date(s) of their retirement.

iv) In **D.C.S. Negi v. Union of India & Ors.**, Special Leave to Appeal (Civil) CC No.3709/201, judgment dated 07.03.2011, the Hon'ble Supreme Court has held that it is the duty of the Tribunal to first consider whether the application is within limitation. These OAs have not been filed within the prescribed period of limitation.

v) FR-17 says that an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties.

vi) As per FR 49 (iv) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge.

vii) As per Rule 49 of the CCS (Pension) Rules, 1972 in case of Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than thirty three years, pension is calculated with reference to average emoluments, namely, the average of the basic pay drawn during the last 10 months of the service or last basic pay drawn whichever is beneficial. The applicants have not drawn the last pay in the pay scale of Principal and hence their pay cannot be fixed in the promotional grade by virtue of the provisions of FR-17.

viii) The applicant in OA No.1081/13 – Usha Kathuria had worked as HOS w.e.f. 01.12.1999 in view of the school being headless due to non-posting of Principal. The officiation as HOS does not amount to officiation on the post of Principal. Smt. Kathuria was

holding the substantive post of Vice-Principal and not that of Principal even while officiating as HOS. Likewise, the applicant in OA-48/2012 – Shri Jai Narain Kaushik was declared as HOS for short period while holding the post of Vice Principal. These applicants are claiming salary of the post of Principal for the period when they had been declared as HOS but continued to work in the substantive capacity of Vice-Principal.

7. Arguments of learned counsel for the parties were heard on 03.05.2017. They by and large reiterated the contention of their clients in their respective pleadings.

8. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. The facts are not in dispute. The applicant in OA No.1081/2013 retired from service on 31.07.2002. She was declared as HOS w.e.f. 01.12.1999 and till her date of retirement on 31.07.2002. The applicant in OA No.48/2012 – Jai Narain Kaushik was declared HOS during the period from 04.07.2006 to 15.04.2008 and retired from service on 31.07.2008. Both the applicants retired while holding the substantive post of Vice-Principal. They were never placed incharge of the post of Principal even on ad-hoc basis. Let alone drawing the salary of the post of Principal on ad-hoc basis, they have not even been given incharge allowance of the post

of Principal. The HOS is not in the hierarchy of postings in a school set-up. It is a general practice that for the sake of administrative convenience, the senior-most teacher is declared as HOS but without any financial benefits/remuneration.

9. These applicants like several others could not be considered for promotion to the post of Principal while they were in service due to non-availability of vacancies in the post of Principal. For this reason, the DPC meetings could not be conducted for promoting them when they were in service. However, after their retirement, the respondents on re-assessment of the vacancies, came to realise that several posts of Principal were available where many officials holding the posts of ad-hoc Principal/Vice-Principal could be promoted to the post of Principal. Accordingly, vide Annexure A-4 order dated 22.10.1998 the respondents brought out the promotion order, promoting a large number of officials holding ad-hoc Principal/Vice-Principal posts to the posts of Principal. The said order also indicated the vacancy year against which the individuals have been promoted. In the said process, the applicant in OA No.1081/2013 Smt. Usha Kathuria was promoted against the vacancy of 2001-02. Shri Jai Narain Kaushik, applicant in OA No.48/2012 was not at all considered for promotion in the order dated 22.10.2008.

10. The order dated 22.10.2008 clearly stipulated that no financial benefits would be granted to the officials promoted. Unlike the applicants in OA No.809/2009, these applicants did not choose to take to legal recourse. They have approached this Tribunal only after the judgments of the Tribunal in OA No.809/2009 and OA No.1171/2010. Their contention that they have been representing to the respondents for espousal of their respective cases does not grant them limitation. The Hon'ble Apex Court in the case of **D.C.S. Negi** (supra) has clearly held as under:

“Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the Applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21.

Since Section 21 (1) IS COUCHED IN NEGATIVE FORM, IT IS THE DUTY OF THE Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21 (3).”

11. Furthermore, in **Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation & Another**, [(2010) 5 SCC 459], the Hon'ble Supreme Court observed as under:

“8.....The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation

prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate."

12. In **State of Tripura & Others v. Arabinda Chakraborty & Others**, [2014 (5) SCALE 335], the Hon'ble Apex Court held as under:

"..... Simply by making a representation, when there is no statutory provision or there is no statutory appeal provided, the period of limitation would not get extended. The law does not permit extension of period of limitation by mere filing of a representation. A person may go on making representations for years and in such an event the period of limitation would not commence from the date on which the last representation is decided."

13. In view of the law laid down by the Hon'ble Supreme Court in the cases of **D.C.S. Negi, Oriental Aroma Chemical Industries Ltd.** (supra) and **Arabinda Chakraborty** (supra), we are of the view that these OAs suffer with limitation and on this ground alone are liable for dismissal.

14. From the records, it is clear that these applicants have remained fence sitters, awaiting the outcome of the litigations filed by others. The Hon'ble Supreme Court in **BSNL Vs. Ghanshyam**

Das & Ors., reported in (2011) 4 SCC p.374, has held that the order of the Tribunal may not be treated as a judicial precedent for those who were sitting at the fence. Paras 25 and 26 of the judgment read as under :

“25. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:

(a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

(b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

(c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

(d) where the court expressly directs that the relief granted should be extended to those who have not approached the court.

26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others.”

15. As regards merit, these applicants had been declared as HOS of their respective schools for the duration indicated in paras 2.1 and 2.8 supra. HOS is not a post in the pay scale of Principal. The senior-most teacher, in the absence of Principal, is declared as HOS. Hence mere declaration of an official as HOS, does not entitle

him to any financial benefits as such. Both the applicants have retired while holding the substantive post of Vice-Principal. The applicant in OA No.48/2012 – Shri Jai Narain Kaushik even ceased to be HOS from 16.04.2008. The same position continued till he retired on attaining the age of superannuation on 31.07.2008. Hence, it is our crystal clear view that applicant in OA-1081/13 – Smt. Usha Kathuria is not entitled to grant of any financial benefit with retrospective effect vis-a-vis promotion order dated 22.10.2008 even though she was shown to have been promoted against the vacancy of the year 2001-02 in the said order. The applicant in OA-48/2012 – Shri Jai Narain Kaushik on the other hand, has not at all been considered for promotion in the order dated 22.10.2008.

16. In the conspectus of the discussions in the foregoing paras, we are of the view, that both the OAs suffer with limitation and at the same time are also devoid of merit. Accordingly, both the OAs as dismissed on the ground of limitation as well as merit.

17. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

‘San.’