

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

**OA NO.2275/2013  
MA NO.1753/2013**

Order reserved on: 27.11.2015  
Order pronounced on: 4.12.2015

**HON'BLE MR. P.K. BASU, MEMBER (A)**  
**HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Anand Swaroop Bhardwaj  
S/o Shri Ram Prashad  
SU-134, Vishaka Enclave  
Pitampura,  
Delhi-110034

...Applicant

(Through Shri K.K. Sharma, Advocate)

**VERSUS**

1. Govt. of NCT of Delhi,  
Through Chief Secretary,  
Delhi Secretariat, Players Building,  
I.P. Estate, New Delhi-110001.
2. Director of Education,  
Directorate of Education  
Old Secretariat,  
Delhi-110054
3. Spl. Director of Education (SB),  
Directorate of Education  
Old Secretariat,  
Delhi-110054

...Respondents

(Through Shri Pradip Kumar for Shri Vijay Pandita, Advocate)

**ORDER**

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

This OA has been filed to quash and set aside impugned order dated 3.04.2013 passed by the respondents in compliance of order dated 19.10.2012 in OA 2849/2012 filed by the

applicant. In this detailed order, the respondents have rejected the applicant's prayer to fix his pay in the grade of Principal, on the ground that he had not shouldered the responsibility of the said post and further that his case was dissimilar from the case of Gauri Shankar Sharma. The specific prayers in the OA are as follows:

- “(i) to quash and set aside the impugned order dated 3.04.2013 no. F-31(98)/SB/Edn/2012/1984-1989.
- (ii) to direct the respondent to fix the pay in Principals grade on the parity of the Ram Rattan Vs. Lt. Governor's case, OA No.2178/2010.
- (iii) to pay the arrears of enhanced salary and enhanced retiral dues with arrears and interest thereon.”

2. The facts of the case are that the applicant was posted as Vice Principal on regular basis at Government Boys Secondary School, O-Block, Mangolpuri, from which post he retired on 31.01.2002. The applicant claims that he discharged the duties of Head of School (HOS)/ Head of Office (HOO) between 1.04.1997 and 31.07.1997 and from July, 1998 to February, 1999. It is stated that vide order dated 22.10.2008, the respondents promoted male ad hoc Principals/ Vice Principals to the post of Principal on officiating basis in the pay scale of Rs.10000-325-15200 (pre-revised) with the stipulation that the

promotion will have only prospective effect even if the vacancy relates to the earlier years. The applicant's name appears at serial number 118 and the vacancy year in his case is shown as 2001-2002. In this list of 313 officers who had already retired from government service, specifically mentioning that the promotion was on notional basis and with immediate effect for the vacancy year shown against their names, has also been placed on record by the applicant. The grievance of the applicant is that though this order was issued, it was not communicated to him and he came to know of this order from his successor, Shri Bhagwan Dass, one of the applicants in OA 2178/2010. The applicant filed his representation on 13.07.2011 and legal notice on 9.12.2011 but his representation was rejected on the ground that pay cannot be fixed and pensionary benefits cannot be given as the applicant was not a party in OA 2178/2010, **Ram Rattan Vs. Lt. Governor of Delhi**. This order of the respondents is dated 7.08.2012. Thereafter, the applicant filed OA 2849/2012 and vide order dated 19.10.2012, the said OA was disposed of with the following directions:

"4. Looking to the nature of the controversy and also in the facts of the case, we are of the view that it would be appropriate to dispose of this application at this stage with the direction to the second respondent that in the event the applicant makes a detailed representation before him (Director of Education) along with copy of the order of the Tribunal dated 5.02.2010 in OA No.809/2008, within a period of two weeks from the date of receipt of a certified copy of this order, the same shall be considered and disposed of by the respondent No.2 expeditiously, preferably within a period of six weeks from the date of filing of such representation. We

further provide that in the event Director of Education (Respondent No.2) comes to the conclusion that applicant is not entitled to the same relief or his case is different to Gauri Shankar Sharma (supra), in that event, he shall record reasons and communicate the same to the applicant within the aforesaid period."

3. The applicant thereafter filed a representation dated 16.11.2012 claiming parity with Ram Rattan's case (supra) but the respondents rejected his representation vide aforementioned order dated 3.04.2013. Therefore, this OA.

4. The learned counsel for the applicant referred to a notesheet (date not legible) of the respondents file in which there is a recommendation by somebody even junior to the Office Superintendent that the applicant's case for pay fixation in the pay scale of Rs.10000-15200/- can be forwarded to the Secretariat Branch at Headquarters for consideration. Again copy of a notesheet is referred to where similar recommendation is purported to be made based on the recommendation in case of Shri Bhagwan Dass, retired Vice Principal, who was also granted the financial benefit.

5. Needless to say, we cannot take cognizance of copies of these notesheets in view of the law laid down by the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal**, 2013 (14) SCALE 323.

6. Our attention was also drawn to reply to RTI Application in respect of Shri K.K. Sharma dated 13.06.2013 where the following was admitted by the respondents:

| Sl.No. | Information sought   | Information given  |
|--------|--|--|
| 01     | The number of beneficiary candidates who were enlisted in the above orders were in service on 22.10.2008 | The number of Vice-Principals so promoted vide promotion order dated 22.10.2008 and who were in service as on that date were 109 Male and 91 Female (copy enclosed). As regards the number of beneficiary candidates the question is not clear |
| 02     | The number of beneficiary candidates who were enlisted in the above orders stood retired on 22.10.2008   | The number of Vice Principals so promoted vide promotion order dated 22.10.2008 and who stood retired as on that date were 313 Male and 176 Female. As regards the number of beneficiary candidates the question is not clear.                 |

7. Referring to Ram Rattan (supra), the learned counsel for the applicants stated that the applicant therein had cited order of this Tribunal dated 5.02.2010 in OA 809/2009, **Gauri Shanker Sharma Vs. Lt. Governor of Delhi & others**. The issue there was again the same i.e. while the petitioner was granted promotion on notional basis but was denied financial benefits. The OA was allowed citing parity of reasons with Gauri Shanker Sharma (supra).

8. The applicant has also produced order dated 31.01.2011 by which his junior Shri Bhagwan Dass, in the light of decisions of this Tribunal in Ram Rattan (supra) and Gauri Shanker Sharma (supra), was promoted notionally to the post of Principal with further direction to pay the arrears of salary for the period he was in service and revised retirement benefits after his retirement with 6% interest on arrears.

9. The simple case of the applicant is that for parity of reasons with Ram Rattan (supra) and Gauri Shanker Sharma (supra) and the reason that his junior Shri Bhagwan Dass was

given benefit of pay scale of the post of Principal, he cannot be denied the same benefit.

10. The learned counsel for the respondents, first of all, raised the ground of delay. It is stated that in a catena of cases, the Hon'ble Supreme Court has held that aggrieved party should approach the Court within the statutory period prescribed. In this regard, he cited the following judgments:

- (i) **State of Punjab Vs. Gurdev Singh**, (1991) 4 SCC 1
- (ii) **UOI Vs. Ratan Chandra Samanta**, JT 1993 (3) SC 418
- (iii) **Harish Uppal Vs. UOI**, JT 1994 (3) SC 126
- (iv) **Ajay Walia Vs. State of Haryana & ors**, JT 1997 (6) SC 592, where the Hon'ble Supreme Court held as follows:

"Representation repeatedly given to various authorities do not furnish fresh course of action to file Writ Petition. The High Court is wholly unjustified to have entertained and allowed the Writ Petition."

- (v) **Union of India Vs. M.K. Sarkar**, (2010) 2 SCC 59, where the Hon'ble Supreme Court held thus:

"C. Service Law – Delay/ Laches/ Limitation – Reckoning of date of accrual of cause of action – Tribunal allowing respondent's application without examining merits directing Railway Administration to "consider" state claim- Unnecessary litigation and avoidable complications arising out of – Propriety and warrantedness of – Held, when a

stale or dead issue/dispute is considered and decided, date of such decision cannot furnish a fresh cause of action for reviving dead issue or time-barred dispute – Issue of limitation or delay and laches has to be considered with reference to original cause of action and not with reference to date on which an order is passed in compliance with a court's direction – Moreover, court or tribunal, should not direct consideration or reconsideration of a dead or stale issue or dispute – Administrative Tribunals Act, 1985 – Ss. 20 and 21 – Practice and Procedure – Directions to “consider” – Scope and effect – Limitation – Reckoning of date of accrual of cause of action – Limitation Act, 1963 – S.3

D. Service Law – Relief – Permissible grounds – Relief claimed on ground of applicability of Art. 14 for extension of same relief though improperly granted in some other case – Untenability – Held, someone wrongly extended a benefit, cannot be cited as a precedent for claiming similar benefit by others – A claim on basis of guarantee of equality, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled to the same – if he wants, he can challenge the benefit illegally granted to others – Constitution of India – Art. – 14.”

(vi) **D.C.S. Negi Vs. Union of India & ors.,** (Civil

Appeal No.7956 of 2011) where the Hon'ble

Supreme Court held as follows:

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. 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).

In the present case, the Tribunal entertained and decided the application without even advertent to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non applicant is not at all relevant.

A copy of this order be sent to the Registrar of the Principal Bench of the Tribunal, who shall place the same before the Chairman of the Tribunal for appropriate order."

11. It is argued that the applicant has approached this Tribunal after a period of five years from the date of the promotion order dated 22.10.2008 and ten years from the date of his retirement i.e. 2002 and, therefore, the case of the applicant is hit by delay and laches and deserves to be dismissed on this ground alone.

12. It is further argued that the applicant has never worked as Principal in his service period. In fact, it is admitted by both sides that there is no post of Principal in the said school. It has also been stated that at relevant point of time, pension was calculated with reference to average emoluments namely, the



average of the basic pay drawn during the last ten months of the service or last basic pay drawn, whichever is beneficial. Further, in the instant case, the applicant has not drawn the last pay in the pay scale of Principal and neither can the pay be fixed in the promotional grade by virtue of provisions of FR 17, which clearly speaks 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. Moreover, the respondents have placed on record copy of order dated 15.04.2011 passed by the Central Information Commission (CIC) in File No.CIC/SG/A/2011/000264/LS, specifically drawing our attention to the following part of the order:

"2. Shri Vijay Kumar submits a detailed representation duly signed by the Director of Education which is taken on record. It is his submission that the order dated 22.10.2008, vide which notional promotion to 313 Vice Principals was given, was not in conformity with DOPT instructions issued vide O.M. No.22011/4/98-Estt. (D) dated 12.10.1998 and that the Department was contemplating withdrawal of this order but it could not be done as the matter had by then become sub-judice. It is also his say the appellant cannot be given notional promotion. The relevant paras of the representation of the Director of Education are extracted below:

"However, there are neither such recommendations of the DPC forgiving "Notional Promotion with immediate effect" nor there any such instructions in the DOPT OM dated 12.10.1998. Therefore, the Department was supposed to have withdrawn the said Promotion Order to the extent of giving 'notional promotion with immediate effect' in respect of the retired officials, but for the fact that the said promotion order dated 22.10.2008 had become sub-judice in O.A.

No.809/09 titled Gauri Shankar Sharma Vs. GNCTD & ors.

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However, the retired officials mentioned there in the Promotion Order dated 22.10.2008 as referred to above, are not entitled for any notional benefits, for the reason that it was clearly mentioned there in the order that they are promoted on Notional Basis "with immediate effect". Further, none of their juniors were promoted in the previous DPCs."

13. It is mentioned, therefore, that the department has taken the stand before the CIC and which is reiterated before us that the order dated 22.10.2008 vide which notional promotion to 313 Vice Principals was given, was not in conformity with DoP&T instructions and the department was contemplating withdrawal of this order. This withdrawal could not take place earlier because the matter was *sub judice* in Gauri Shanker Sharma (supra).

14. Learned counsel for the respondents also drew our attention to Gauri Shanker Sharma (supra) to distinguish this case from the case of the applicant as the order clearly shows that Gauri Shanker Sharma, one of the applicants in that case, had actually been promoted to the post of Principal and given charge of the HOS on different date. Similar is the position in the case of Ram Rattan (supra), in which case, the respondents point out that Shri Ram Rattan was also holding the post of Principal and, therefore, both these orders are distinguishable from the case of the applicant, who was never promoted as Principal but was only given charge as HOS/ HOO, which cannot

be said to be equivalent of being promoted as Principal as HOS/HOO is not a designation.

15. As regards benefit given to Shri Bhagwan Dass, the learned counsel for the respondents argued that the applicant cannot claim negative equality [**Union of India Vs. International Trading Co.**, [(2003) 5 SCC 437]. It is also pointed out by the learned counsel for the respondents that the impugned promotion order dated 22.10.2008 has also not been challenged by the applicant and that order clearly states, as mentioned above, that promotion will have only prospective effect. So, there is no way the applicant can claim retrospective promotion.

16. Lastly, it is pointed out that the averments made in para 3 of the OA that the cause of action first arose when the applicant was promoted and directed by the Dy. Director of Education to hold the charge of Head of School till further orders, is incorrect and false as the applicant was never promoted to the post of Principal as would be clear from the order dated 31.03.1997 filed by the applicant along with his OA, which shows that he was appointed Head of Office as additional charge and there was no mention of any promotion.

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

18. The following facts are clear. There has been extreme delay on the part of the applicant in filing this OA and the delay

has not even been explained. As pointed out by the learned counsel for the respondents, the law settled by the Hon'ble Supreme Court in *Ajay Walia (supra)* is that repeated representations do not extend the period of limitation. This matter is hit by Section 21 of the Administrative Tribunals Act 1985 and not maintainable on the ground of delay itself.

19. However, even on merits of the matter, we find that the applicants both in *Ram Rattan (supra)* and *Gauri Shanker Sharma (supra)*, actually held the post of Principal and, therefore, the orders passed by the Tribunal in those cases cannot be cited as precedent in the case of the applicant herein and this ground taken by the applicant stands rejected.

20. On the question of *Shri Bhagwan Dass*, junior to the applicant being given the benefit, we agree with the argument of the learned counsel for the respondents that in view of law settled by the Hon'ble Supreme Court in *International Trading Co. (supra)*, negative equality cannot be sought by the applicant. The respondents have made it clear that promotion order dated 22.10.2008 clearly stated that it is with prospective effect and that order has not been challenged in this OA. Lastly, since the aforesaid order dated 22.10.2008 was not in conformity with DoP&T instructions, the respondents have taken a decision to withdraw this order itself.

21. In view of the above discussion, we find no merit in this OA and it is, therefore, dismissed. No costs.

( Raj Vir Sharma )

( P.K. Basu )

Member (J)

Member (A)

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