

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No-3383/2012

Order Reserved on: 03.09.2015

Order Pronounced on: 29.02.2016

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

Shri Gian Chand,
R/o House No. 1466, Gali No.13,
Govind Puri, Kalkaji, New Delhi-110019.

-Applicant

(By Advocate: Shri B.K. Berera)

Versus

1. The Govt. of NCT of Delhi
Through the Chief Secretary,
Delhi Secretariat, Players Building,
New Delhi.
2. The Principal Secretary,
Directorate of Technical Education,
Maya Muni Ram Marg,
Near T.V., Power, Pitampura,
Govt. Of NCT of Delhi, New Delhi-88
3. The Principal,
Ambedkar Polytechnic,
Govt. of NCT of Delhi, Shakarpur,
Delhi.
4. The Chairman,
All India Council of Technical Education,
7th Floor, Chanderlok Building Janpath
New Delhi-110001.

-Respondents

(By Advocate: Shri B.N.P. Pathak and
Ms. Puja Sarkar for Mr. Anil Soni)

ORDER

Per Sudhir Kumar, Member (A):

The applicant of this OA was appointed as a Workshop Superintendent with the Respondents No. 2 & 3 under Respondent No.1

on 27.03.1980 through the due process of selection, as per the qualification possessed by him at that point of time, as per then prevailing Recruitment Rules (RRs, in short). He is aggrieved by the impugned order dated 11.05.2012 passed by the respondents by which they have rejected his claim and have stated that he did not possess the requisite qualifications at par with the qualifications prescribed for the Head of Department (HOD, in short) as per 1989/1999 guidelines of Respondent No.4 - All India Council for Technical Education (AICTE, in short). The applicant has alleged that the impugned order has been passed on the basis of a totally wrong interpretation of the Policy Guidelines of AICTE. Hence this OA.

2. It has been admitted by the applicant that service conditions including pay scales of Technical Staff of Polytechnics all over the Country are regulated in accordance with the qualifications prescribed by AICTE. In accordance with the Policy Guidelines as had been so laid down when the applicant joined as Workshop Superintendent, he has claimed that that post was declared/approved to be in the cadre of the HOD, in the then revised pay scale of Rs. 3700-5700, and that, therefore, he was the Head of all the Workshops in the Polytechnic, and was directly responsible to the Principal in all the matters concerned with all the Workshops of the Polytechnic. The applicant has claimed to have obtained a Final Pass Certificate from the Institution of Mechanical Engineers which, according to him, is recognized to be at par with a

degree in Mechanical Engineering from an Indian University. The applicant has claimed that he had thereafter obtained a Bachelor of Engineering Technology (Mechanical) degree also in 2004 from the University of Delhi. The certificate earlier issued by the Institution of Mechanical Engineers for his having passed in Section A and Section B of the Associate Membership Examination in June 1989, and the University Degree obtained by him in 2004 at the Convocation held in 2005, have been produced at Annexure A-2.

3. However, this is not the first round of litigation on this subject. When the applicant was earlier denied the higher pay scale as applicable to the HOD, while he had been working in an equivalent cadre as a Workshop Superintendent, he had filed OA No. 647/2001. After consideration of his case, and relying upon the judgment of a Coordinate Bench in **Mohammed Mansoor vs. Union of India** dated 23.03.1998 in OA No.412/94 decided by the Calcutta Bench, this Tribunal had allowed that earlier OA No.647/2001 through order dated 09.04.2002 (Annexure A-3), and had directed the respondents to grant to the applicant the benefit of the pay scale of Rs. 3700-5700 (revised to Rs. 12000-18000) from the same date, when it was given to the ranks of other HODs, along with arrears, provided that the applicant fulfils the essential qualifications prescribed for the post of HOD (Lecturer and Selection Grade) as prescribed on September 20, 1989.

4. However, the respondents filed a Writ Petition No. 4895/2002 before the Hon'ble Delhi High Court challenging that order of this

Tribunal. The Hon'ble High Court had, vide its judgment and order dated 29.04.2011, allowed that Writ Petition, and had held as follows:-

8. It is urged by Mrs. Avnish Ahlawat, learned counsel for the petitioner, that the AICTE is silent about the salary structure of Workshop Superintendent, qualifications for the post of Head of the Department which is higher than the post of Workshop Superintendent and the recommendations of Madan Committee and the AICTE are not mandatory. It is her further submission that the Government/Union territories are to decide the pay-scale taking into consideration the local conditions, the post of senior lecturer is not equivalent to the Head of the Department inasmuch as the post of senior lecturer is in the pay-scale of Rs.10000-15200 whereas, the post of Head of the Department is in the pay-scale of Rs.12000-18000, the Diploma holder working in the post of Workshop Superintendent cannot be placed in the pay-scale of Head of the Department and the Foreman instructor is not a feeder post of Workshop Superintendent and that Jamia Millia Polytechnics had the post of Workshop Superintendent already in the pay-scale of Rs.3000-4500 (prior to revised scale of pay) and qualifications prescribed were also higher. Learned counsel for the petitioner has produced a comparative chart of pay-scale from the paper book and learned counsel has also invited our attention to the recruitment rules that post of Foreman-Instructor is not a feeder post and in any case the petitioner (sic. Respondent) does not possess the qualifications to hold the post of Head of the Department as the pre-requisite to hold the said post is a Master's Degree in Engineering and he does not hold the same.

9. At this juncture, we may refer to Annexure „A which deals with the recommendations of All India Council of Technical Education regarding the revision of pay-scales of technicians and technical institutions.

10. The requisite qualification for Head of the Department is as follows:

"REQUIRED QUALIFICATIONS:

Head of Department:

Essential : 1) First class Master's degree in engineering/technology/technician education or Ph.D Degree in appropriate branch for teaching posts in humanities and sciences

ii) 5 yrs experience in teaching industry and research of appropriate levels Note: Candidates from industry/ profession with recognized professional work equivalent to master's Degree or Ph.D degree as the case may be will also be eligible.

Desirable: i) Ph.D degree in engineering/technology/technician education

Or

Post -Doctoral work in the case of teaching posts in humanities and sciences.

Work Superintendent

Essential: I) degree in Mech. Engg. of a recognized University or equivalent.

i) About 1 year experience in large mechanical Engineering workshop.

OR

i) Diploma in mechanical Engg. of a recognized institute or equivalent.

ii) About 5 years experience in a large Mechanical Engineering Workshop."

11. On a perusal of the facet of qualifications, it is clear that the aspirant must hold a first class Master's Degree in Engineering. It is also worth noting that the Principal Bench of the tribunal in O.A. No.1311/1998 in the case of **N.K.Sarsoon v. Govt. of National Capital Territory of Delhi**, dealt with the prayer of the applicant therein for issue of directions to the respondent to upgrade the post of Workshop Superintendent as per recommendations of the Madan Committee as well as that of the AICTE with respect to the post of Workshop Superintendent and to confer the benefit of pay-scale of Rs.3700-5700 w.e.f. 1.1.1996. Be it noted, the said pay-scale was revised later on. The tribunal in that context expressed the view as follows:

" We have heard the counsel for the applicant. The case of the applicant is that the respondents had set up a Committee in 1974 headed by Prof. P.J. Madan Pro-vice Chancellor in the University of Baroda which had given its recommendations in 1978. One of these recommendations was that Workshops in the Engineering Colleges and Polytechnics should be under the overall charge of a Workshop of Superintendent in the rank of a Senior Lecturer. While the other recommendations including the upgradation of Demonstrators, instructors and Technical Assistant were accepted, the respondents did not implement the recommendation in regard to Workshop Superintendents. Subsequently, in 1989 the All India Council for Technical Education also made certain recommendations about the Staff Cadre structure of Polytechnics and suggested categorization of the Workshop Superintendents with Head of the Department/ Lecturer selection Grade. This

recommendation was also ignored by the respondents. The applicant says that he has given a number of representations for the implementation of the recommendation of Madan Committee and the All India Council of Technical Education in respect of the post of Workshop superintendent but to no avail.

3. We have carefully considered the aforesaid pleadings and the submissions made by the learned counsel. The Directions sought for by the applicant fall in the domain of a policy decision. The State cannot be compelled to accept all or any of the recommendations of an Expert Body constituted by it. No directions can also be given to upgrade a post which could result in a monetary implication. Since the relief sought for by the applicant cannot be granted we find no reason to proceed further with this O.A. which is accordingly dismissed at the admission stage itself."

12. The aforesaid decision rendered by the Principal Bench has been distinguished from the impugned order on the ground that it was dismissed in limine and, hence, is not a binding precedent. To express such a view, the tribunal has not ascribed any reason. In our considered opinion, the view expressed by the tribunal in this regard is incorrect. We have said so as the tribunal on earlier occasion while dismissing the matter in limine had expressed its view by ascribing reasons. Once there is an expression of view which contains a point of law, it is a binding precedent. The tribunal is not correct in holding that it is not so solely on the ground that it has been dismissed in limine. As noticed earlier, the tribunal has followed the directions issued in the case of **Mohammed Mansoor v. Union of India, OA No.412/94** decided by the Calcutta Bench of the tribunal. As is manifest, the tribunal has not really addressed to the statutory rules to show how the right has been fructified. Learned counsel for the petitioner would submit that there are statutory rules that deal with difference in the educational qualification in respect of the posts in question and, hence, treating the posts equivalent is not tenable. It is also her submission that the recommendations given by various committees were not accepted and the said aspect was dealt with in the earlier decision but the same have not been distinguished by the tribunal.

13. Regard being had to the submissions put forth and taking note of the fact that there was an earlier decision, we are of the considered opinion that it was obligatory on the part of the tribunal to address to the distinguishing features, not to treat the earlier decision as a binding precedent and follow the decision in Mohammad Mansoor [supra]. That apart, the lis between the two cases has really not been stated by the tribunal. A bald opinion has been expressed that the earlier decision is not binding precedent which is not correct in law and thereafter abruptly the decision rendered in Mohammed Mansoor [supra] has been followed.

Keeping in view the factual matrix, the rule position, the issue whether the recommendations would have been treated to be binding or at any point of time had been accepted by the Government or Union Territory, we may dispose to think that the order passed by the tribunal deserves to be set aside and the matter has to be remitted to the tribunal for fresh adjudication keeping in view all the aspects and also dealing with how the decision in **N.K. Sarsoonia** [supra] is distinguishable on the facts of the case.

14. In the result, the writ petition is allowed. The order passed by the tribunal is set aside and the matter is remitted to the tribunal for fresh hearing after issuing notices to the parties. There shall be no order as to costs."

5. The OA was thereafter re-considered, and another order of the Tribunal was passed on 06.02.2012, in which it was held as follows:-

"6. At this point, learned counsel for the applicant brought to our notice the specific recommendation of the AICTE contained in paragraph-5 (2)(i) of its Report; it reads as under:-

"2. Where qualifications and experience prescribed for a post in this pay revision are higher than the qualification and experience prescribed by AICTE for that post prior to this revision

(i) the revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions."

7. These recommendations were communicated to all the Secretaries of the State Government and Union Territories dealing with the subject of vide letter dated 30.12.1999. It is the grievance of the applicant that this specific recommendation has not been taken into consideration either by the State Government or by the Ministry of Human Resource in granting the higher pay scale to the applicant for whom the revised high qualification and experience should not have been insisted on as he was an existing incumbent.

8. **In the final analysis, the issue is whether the eligibility of the applicant for higher pay scale meant for the HOD/Senior Lecturer should not be determined by the respondents keeping in view the specific recommendations of the AICTE referred to above.** However, since this issue was brought forward before us only at the time of final hearing, we would direct the competent respondent authority to examine this contention of the applicant in the light of the recommendations of AICTE and take a final decision within a period of three months from the date of receipt of a copy of this order. The O.A. is disposed of accordingly. No costs."

(Emphasis supplied)

6. Though the High Court had specifically directed this Tribunal to freshly adjudicate the matter on all aspects, and also to deal with as to how the decision in the case of **N.K. Sarsoonnia** (produced by the applicant at Annexure A-7 dated 05.08.1998 in OA No.1311/98) was distinguishable on the facts of the case, somehow that aspect of the matter could not come to be commented upon by the Coordinate Bench in its order dated 06.02.2012, and was not mentioned, though the concerned facts of the case were discussed in Paragraphs 4 to 7 of that order.

7. The applicant has, however, submitted that the order dated 05.08.1998 in the case of the said **Shri N.K. Sarsoonnia**, in his OA 1311/98, is not applicable in his case, since in that case, the prayer before this Tribunal was for issuance of directions to the respondents to upgrade the posts of Workshop Superintendent as per the recommendations of the AICTE's Committee, and then fix the pay of the applicant therein in the scale of Rs.3700-5700. The Bench had on 05.08.1998 **Shri N.K. Sarsoonnia** (supra) held that the directions sought for by the applicant fall in the domain of a policy decision, and the State cannot be compelled to accept all or any of the recommendations of an Expert Body constituted by it. It was also held that no direction can be given to upgrade a post, which could result in a monetary implication, and the Bench had declined to grant the relief, and dismissed the OA at the admission stage itself. The present applicant's submission is that the point of upgradation of posts was not involved, since it is an admitted fact that the post of Workshop Superintendent is at par with HOD posts

in Polytechnics, and in fact the recruitment qualifications are also equal to HOD, and the pay scale sought for in **N.K. Sarsoonias** case having since been granted to him, even the grant of the relevant pay scale is also not disputed by the respondents.

8. It was, therefore, submitted that the only question to be decided now is as to whether the applicant, who had been appointed on 27.03.1980 as per the then prevailing RRs for the post of Workshop Superintendent, was entitled to the pay scale equivalent to HOD or not. He is aggrieved that though the respondents have, in the impugned order, admitted that the post of Workshop Superintendent is at par with HOD post, yet they have passed an order, which he claimed to be in conflict with the Policy Guidelines of 1989 or 1999 brought out by the AICTE.

9. The case of the present applicant, therefore, is that the AICTE 1999 Guidelines clearly prescribed that where qualifications and experience prescribed for a post involved in the pay revision (after the 5th Pay Commission Report) are higher than qualifications and experience prescribed by AICTE for that post prior to the pay revision, the revised qualifications and experience will be required only for the cases of fresh appointments to those posts, and that the revised qualifications will not be insisted upon for existing incumbents working on those positions.

10. He has submitted that prior to that, the AICTE had itself issued Guidelines for career advancement of Lecturers in Polytechnics dated 10.09.1993, in which, while giving effect to the 4th Pay Commission pay

scales with effect from 01.01.1986, it was mentioned that all the existing staff would be eligible for grant of revised pay scales, and the benefits of Career Advancement were exempted from the application of the revised qualifications, prescribed through AICTE Circular dated 20.09.1989, which revised qualifications were to be applicable only to the new entrants recruited after the said date. It has been submitted that the status of the post of Workshop Superintendent had been further re-affirmed by AICTE in 1995 and 1999, by making it clear that the Workshop Superintendent will be equal to the cadre of the HOD, as per the letter dated 30.06.1998 (Annexure A-9). It was, therefore, submitted that the respondents have taken a very contradictory, irrational and unjust stand in passing the impugned order.

11. The applicant had taken the further ground that his case is squarely covered by the judgment dated 28.03.1998 of a Coordinate Bench in **Mohammaed Mansoor vs. Union of India** (supra), since the applicant therein was holding the same post of Workshop Superintendent, as was held by the applicant. He had taken the further ground that he possessed all the qualifications prescribed for the post as per RRs prevailing at the time of his initial selection through UPSC. In the result, he had prayed for the following reliefs:-

- “(a) to quash and set aside the impugned order dated 11-05-2012
- (b) To issue direction to the respondents to grant pay scale of Rs.3700-5700 (Revised Rs.12000-18000) with consequential benefits including payment of arrears of pay etc. wef from the date as given to the equivalent rank of Head of Department.

- (c) To allow exemplary cost in favour of the applicant and against the respondent for causing avoidable mental agony and torture in forcing the applicant for a number of litigations and
- (d) Any other order as this Hon'ble Tribunal may deem fit under the present facts and circumstances of the case."

12. Respondents No. 1 to 3 filed their counter reply on 09.04.2013, and denied the contention of the applicant that he possessed the requisite qualifications at par with the HOD post as per the 1989/1999 Guidelines of AICTE. It was submitted that it is wrong to suggest that the case of **Shri N.K. Sarsoonja** (supra) is not applicable in the present case, since, as a matter of fact, in that OA also, same relief of upgradation of pay scales to the scale of Rs.3700-5700 had been sought, which was the scale of HOD. It was submitted that the claim of the applicant has been rightly rejected, as he does not possess the requisite qualifications, at par with the HOD posts. It was submitted that since the applicant had been appointed at a lower post, in a lower pay scale, with a lower qualification, as per RRs prevalent at that time, it cannot be a case to be covered under the relaxation clause under AICTE Guidelines of 1989 and 1999 (supra).

13. It was further submitted by the respondents that a Workshop Superintendent can become equal to the cadre of HOD subject to his possessing academic qualifications at par with HOD, and the same pay scale can also be granted, only on the condition that the academic qualification possessed is at par with that prescribed for an HOD. It was further submitted that the case of **Mohd. Mansoor vs. Union of India** (supra) has since been already reviewed by the Hon'ble High Court while dismissing and setting aside the plea of the present applicant. It was,

therefore, prayed that the OA deserves to be dismissed, being devoid of any merit.

14. The applicant filed a rejoinder on 03.07.2013, more or less reiterating his contentions, and pointing out that he had since obtained even the Bachelor of Engineering Technology (Mechanical) degree from Delhi University, and, therefore, he now fulfils all the qualifications for the post of HOD as per AICTE Guidelines. It was reiterated that on the one hand the respondents have admitted that the post of Workshop Superintendent, which the applicant was holding, is equivalent to the HOD post, but at the same time his claim for similar pay scale was rejected, stating that he did not possess the requisite academic qualifications at par with those prescribed for the HOD posts, which was incorrect in accordance with the AICTE Guidelines. It was submitted that the respondents have failed to explain as to how the applicant has misinterpreted the AICTE Guidelines, and the averments made in regard to the Guidelines were repeated, and it was prayed that the OA be allowed.

15. Even though repeated opportunities had been granted to Respondent No.4 to file the counter affidavit, since the counter reply was not filed, their right to file a separate counter reply was forfeited through order dated 25.11.2013.

16. During the pendency of the OA, through MA No. 2843/2014 dated 27.08.2014, a prayer was made to amend the prayer clause of the OA.

Reply to that MA had been filed by the respondents on 31.03.2015. That MA was allowed on 31.03.2015, and the prayer clause of the OA was allowed to be amended, as prayed for in the MA.

17. Heard. During the course of arguments, learned counsel for the applicant took us through the various judgments filed by him along with the OA, as already listed above, and pointed out the Guidelines of AICTE dated 10.09.1993, as filed through Annexure A-8, and the relevant portion of the AICTE Notification dated 30.12.1999, regarding Revision of Pay Scales and Associated Terms and Conditions in respect of Technical Institutions.

18. We have given our anxious consideration to the facts of the case, and we have to analyse in detail the impugned order as passed, and we find that the entire crux of the matter lies in the contents of the impugned order as follows:-

**“GOVT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRAINING AND TECHNICAL
EDUCATION MUNI MAYA RAM MARG, PITAMPURA,
DELHI-110088**

F.19/DTTE/LIT.CELL/01/Pt.File/4060/3742

Dated: 11.05.2012

Whereas, Shri Gian Chand, Retd. Workshop Superintendent, appointed as Workshop Superintendent on 27.03.1980 in the scale of Rs.2200-4000 (prerevised) by due process of selection through UPSC as per the qualifications possessed by him at that time, as per prevailing RR at that time.

Whereas, AICTE had issued guidelines vide order September 1989 and Norms and Standards for Polytechnics in August 1990 wherein it is indicated that staffing pattern in the

Polytechnics will have Workshop Superintendent in the cadre of HOD(Polytechnics), as such AICTE did not prescribe any qualifications. However, on the existing recruitment rules prevailing at that time, the department had made the recruitment of Shri Gian Ghand through UPSC.

Whereas the qualifications prescribed for the post of HOD (Polytechnics)/Lecturer(Selection Grade) as per the guidelines of AICTE 1989 is a given below:

Post	Qualification/Experience
Head of Department [Lecturer(Selection Grade)]	<p><u>Essential:</u></p> <p>i)First Class Master’s Degree in Engg/ Technology /technical Education</p> <p>OR</p> <p>PhD Degree in appropriate branch for teaching posts in Humanities and Science</p> <p>ii) 5 years experience in teaching, industry and research at the appropriate levels.</p> <p><u>Desirable:</u></p> <p>PhD Degree in Engg/Technology/technician Education or Post Doctoral work in the case of Teaching posts in Humanities and Science.</p>

Whereas, AICTE in year 1999 issued the guidelines in reference to 5 CPC and prescribed the qualifications mentioned as under:-

Post	Qualification/Experience
Head of Department	<p><u>Essential:</u></p> <p>i) Master’s Degree in appropriate branch of Engineering /technology with First Class Master’s Degree or Bachelors Level</p> <p>OR</p> <p>PhD Degree in appropriate branch for teaching</p>

	posts in Humanities and Science
	ii) 5 years experience in teaching, industry and research at the level of Lecturer or equivalent.

Whereas, AICTE 1999 guidelines communicated vide letter dated 30.12.1999 introduced a relaxation clause as mentioned in the judgment of this matter is reproduced as under according to which the competent authority has been directed to examine, states that

“Paragraph-5(2)(i):

“2. Where qualifications and experience prescribed for a post in this pay revision are higher than the qualification and experience prescribed by AICTE for that post **prior to this revision.**

The revised qualifications and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions.....”

Whereas, it is clarified that above clause are applicable to those who were granted pay scales with qualifications as per AICTE in 1989 guidelines, and further AICTE if enhanced the qualifications of particular post and benefits of above mentioned relaxation clause are applicable to the existing incumbents **only if they are possessing the qualifications lesser than the ones mentioned in the 1999 Guidelines.** However, in the present instance, **Shri Gian Chand, Lecturer-applicant was not covered under AICTE 1989 guidelines and hence these relaxation clause is not applicable to him. Further it is also submitted that, he was appointed as per the RR at that time at a lower pay scale with a lower qualifications.** Hence, these relaxation clause cannot be made applicable to Shri Gian Chand.

In view of the above facts, relaxation clause of AICTE (1999 Guidelines) is not applicable to Shri Gian Chand, WS (Retd.) as he did not possess requisite qualifications at par with HOD as mentioned above as per 1999/1989 guidelines. Therefore, he cannot be given the prescribed pay scale for the post of WS which is at par with the HOD post in polytechnics.

This order is passed in compliance to direction of Hon’ble CAT vide their order dated 06.02.2012 in OA 647/2001”.

(Emphasis supplied)

19. It is clear that the case of the applicant is that even though the terms and conditions of his appointment as Workshop Superintendent on 27.03.1980, had later undergone changes twice, firstly at the time of revision of pay scales and the associated qualifications of the posts concerned when the 4th Central Pay Commission (CPC, in short) pay scales were implemented through AICTE Guidelines of September 1989, and secondly at the time when the pay scales and associated qualifications of the post has been revised and changed vide AICTE's 1999 Guidelines, communicated through letter dated 30.12.1999, his case should be covered only by the latter, and not the earlier 1989 Guidelines.

20. As has been pointed out by the respondents in their impugned order (supra), the 1989 guidelines of AICTE had prescribed the essential qualifications for the posts of HOD (Polytechnics)/Lecturer (Selection Grade) being a First Class Masters' Degree in Engineering/Technology/Technical Education, or a Ph. D. Degree, for teaching posts in Humanities and Science, with 5 years' experience in teaching, industry and research at the appropriate levels, with desirable qualifications of Ph. D. Degree in Engineering/Technology/ Technical Education, or Post Doctoral work in the case of Teaching posts in Humanities and Science, which became applicable from 1989 itself. In those 1989 AICTE Guidelines, there was no provision for any waiver of the sort that the revised qualifications and experience will be required only for the fresh appointees to such posts, and that those revised

qualifications and experience, both essential and desirable, will not be insisted on in respect of the then existing incumbents.

21. When the AICTE 1989 Guidelines were implemented, the applicant before us could not be covered, as he did not possess even a Bachelor's degree in Engineering/Technology and Technical Education, and certainly did not possess a First Class Masters' degree as an essential qualification, apart from 5 years' teaching experience at the appropriate level, and he was very far away from the prescribed desirable qualifications of Ph.D. degree in Engineering/ Technology etc. as mentioned above.

22. The applicant could have had a cause of action to agitate the matter at that point of time, and lay a challenge to the AICTE Guidelines issued in September 1989, which he did not. As a result, after the 4th CPC, though he continued in the post of Workshop Superintendent, but he could not qualify to be the HOD (Polytechnics)/Lecturer (Section Grade), under the 4th CPC pay scales, as per the AICTE 1989 Guidelines.

23. Thereafter, the waiver clause was added only when the 5th CPC recommendations were implemented vide letter dated 30.12.1999, through Para-5(2)(i), as already reproduced above, in the impugned order. In these Guidelines, under the 5th CPC also, there was a further change, inasmuch as while the essential qualifications remained the same, with the prescribed qualification being a Masters' degree, but without a First Class prescription being there in respect of either

Masters' degree, or Bachelors degree level, while the requirement at the time of 4th CPC was a First Class Masters' degree.

24. The applicant not having been able to surpass the essential and desirable qualifications as prescribed for the HOD (Polytechnics)/Lecturer (Section Grade) post as per the AICTE 1989 Guidelines, after 4th Pay Commission, has, therefore, been denied by the respondents, the applicability of the relaxation clause contained in AICTE 1999 Guidelines, after the implementation of the 5th CPC pay scales. We find that this action of the respondents cannot be found fault with on any ground under law, or equity.

25. The Hon'ble High Court of Delhi had in its order dated 29.04.2011 (supra) specifically directed this Tribunal to deal with as to how the decision in **N.K. Sarsoonia** (supra) is distinguishable from the facts of the present case.

26. We have considered that aspect also. It is seen that the judgment in the case of **N.K. Sarsoonia** (supra) had been delivered only in the context of 1989 AICTE Guidelines, issued after the acceptance of the 4th CPC recommendations, as till that date, the 5th CPC recommendations had not even been accepted by the Government for the Central Government servants, and certainly could not have been therefore made applicable to the Polytechnics. In that case itself, a Coordinate Bench had rightly held that the directions sought for by the applicant therein, Shri N.K. Sarsoonia, fall in the domain of a policy decision, and the State

cannot be compelled to accept all or any of the recommendations of an Expert Body constituted by it, and further that no directions can also be given to upgrade a post, which could result in any monetary implications. This is the law as laid down by the Hon'ble Apex Court also in the cases of **Commissioner, Corporation of Madras vs. Madras Corporation Teachers' Mandram & Ors: (1997) 1 SCC 253**, and **Union of India vs. T.P. Bombhate & Ors.: (1991) 3 SCC 11 (para 4)**.

27. Therefore, the case of the present applicant is distinguishable from the judgment in the case of **N.K. Sarsoonia** (supra), because in that case the applicability of AICTE 1999 Guidelines dated 30.12.1999 was never an issue, as the 5th CPC recommendations had not yet been adopted till the date of pronouncement of the order in that OA.

28. Having thus complied with the directions of the Hon'ble Delhi High Court dated 29.04.2011 (supra), we find that there is no merit in the present OA, and the OA is, therefore, dismissed, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

cc.