

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.2932 OF 2014

New Delhi, this the 20<sup>th</sup> day of January, 2017

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

**AND**

**HON'BLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER**

.....

Arvind Kumar Yadav,  
aged 39 years,  
S/o Sh.B.D.Yadav,  
Integrated Institute of Technology,  
Sector 9, Dwarka,  
N.Delhi 110077  
(In person)

.....

Applicant

Vs.

1. Govt. of NCT of Delhi,  
through the Chief Secretary,  
5<sup>th</sup> Floor, Delhi Sachivalaya,  
New Delhi.
2. Directorate of Training & Technical Education,  
through its Principal Secretary,  
Muni Maya Ram Marg,  
Pitampura, Delhi 110088
3. The Principal Secretary (Finance),  
GNCT of Delhi,  
Delhi Secretariat,  
Delhi.
4. The Director General,  
Directorate General of Employment & Training,  
Ministry of Labour & Employment (GoI),  
Shram Mantralaya,  
Rafi Marg,  
N.Delhi 110002
5. Union of India,  
through its Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi 110001

6. Union of India,  
through Secretary,  
Department of Expenditure, Ministry of Finance,  
Govt. of India,  
North Block, New Delhi 110001 ..... Respondents

(Advocates for respondents: Mr.N.K.Singh and Mr.R.K.Sharma)

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### **ORDER**

**Per Raj Vir Sharma, Member(J):**

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

- õ(a) Direct the respondents to complete the procedural formalities within reasonable & stipulated time related to the implementation of recommendations of committee on Career Advancement of Staff in ITIs & fix the pay/pay scales as per recommendations i.e. 01/01/2006 (without arrears) and arrears with interest @ of 12% w.e.f. the date of submission of report i.e. 19/9/2011 to the date of disbursement with all consequential benefits as mentioned in annexure A/3 & A/24 respectively.
- (b) award costs of the proceedings and
- (c) Pass any other order/direction which this Honõble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.ö

2. Brief facts of the case of the applicant are as follows:

2.1 The applicant is working as a Craft Instructor in the Industrial Training Institute (ITI), Jaffarpur, Delhi 110073, under the Department of Training & Technical Education, Government of NCT of Delhi (respondent no.2). He is also the General Secretary of Staff Welfare Association, namely, Training Institute Engineers Welfare Association of Delhi.

2.2 It is stated by the applicant that in the meeting of the Ad hoc Task Force (ATF) of the Ministry of Labour & Employment, Government of India, on Result Framework Document (RFD) for 2010-11 held on 26.3.2010, it was decided to conduct a nationwide study on performance evaluation of ITIs/ITCs to find out the efficiency of the Industrial Training Institutes. The study was conducted by the Quality Council of India (QCI) on behalf of the Directorate General of Employment & Training (DGE&T).

2.2.1 It is stated by the applicant that the QCI was set up jointly by the Government of India and the Indian Industries represented by three premier associations, i.e., Associated Chambers of Commerce & Industry of India (ASSOCHAM), Confederation of Indian Industry (CII), and Federation of Indian Chambers of Commerce and Industry (FICCI), to establish and operate national accreditation structure and promote quality through National Quality Campaign.

2.3 The DGE&T (respondent no.4), vide its letter dated 19.5.2011 (Annexure A/1), forwarded copies of the QCI's report to all the Principal Secretaries to State Governments/UT Administrations dealing with Vocational/Craftsman Training, and the State Directors/Commissioners dealing with Craftsman Training Scheme. By the said letter dated 19.5.2011, the DGE&T intimated that the report submitted by the QCI was accepted by the Government of India, and also requested the said authorities to implement the recommendations given by the QCI and to send compliance report.

2.4 It is stated by the applicant that the QCI had given various suggestions for improving the working of ITIs/ITCs, some of which are as follows:

- õa) Salary structure of instructors and staff is very poor.
- b) Proper pay scales are required for instructors with due promotion policy.
- c) Dignity and parity of instructors of ITIs with their counterparts.
- d) Instructors and teachers are not satisfied with their job.ö

2.5 It is claimed by the applicant that the Staff Welfare Association, namely, Training Institute Engineers Welfare Association of Delhi submitted representations to upgrade the posts of instructional staff and to review the existing promotion and financial upgradation policies. In consideration of the said representations, the respondent no.2 constituted a Committee, namely, Committee on Career Advancement of Staff in ITIs. On 19.9.2011 the Committee on Career Advancement of Staff in ITIs submitted its report. The Committee recommended a model of Academic Grade Pay for all categories of staff in ITIs, incentives for higher qualifications, provision of special pay, promotion policy for recruitment as Lecturer in Polytechnic, grant of professional development, creation of post of Training & Placement Officer, grading of Instructors, etc..

2.6 It is the grievance of the applicant that despite repeated representations made by him and by the Staff Welfare Association, respondent nos. 1 to 3 failed to implement the recommendations of the Committee on Career Advancement of Staff in ITIs. Thus, according to the applicant, respondent nos. 1 to 3 acted arbitrarily in not taking final decision

for implementation of the recommendations of the Committee on Career Advancement of Staff in ITIs. Hence, he has filed the present O.A. seeking the reliefs as aforesaid.

3. Respondent nos. 1, 2 and 3 have filed a joint counter reply resisting the O.A. It has been stated by them that the recommendations of the Committee on Career Advancement of Staff in ITIs were forwarded by respondent no.2-Directorate of Training & Technical Education to the Finance (Accounts) Department (respondent no.3). After examining the recommendations, respondent no.3 observed thus:

162. The proposal is silent with regard to whether the committee on Career Advancement for Staff of ITIs constituted by the department is in the pursuance of the recommendations of Quality Council of India which were accepted by GOI.
- 163 FD could not also locate o the file the approval of the Competent Authority for formation of the committee on Career Advancement for Staff in ITIs.
164. With regard to the recommendations of the committee on Career Advancement for staff in ITIs, the views of Finance Department are as follows:

Sl.No.	Recommendation of Committee	Views of Finance Deptt.
1	Introduction of Academic Grade Pay to all Categories of Staff from the post of Workshop Attendant to Additional Director	Presently all the employees of this Govt. are being governed by the pay scales of Sixth Pay Commission. Further, all the rules/Acts of Govt. of India, i.e., FRSR, CCS (Pension) Rules, CCS (Revised Pay) Rules, etc., are being followed in toto by Govt. of Delhi.
		Government of Delhi has no separate service condition for its employees. As per the provisions contained in GOI's Decision No.8 below Rule 11 of DFPR,

		<p>the delegated powers for creation of posts, do not cover upgradation of pay scales of existing posts.</p> <p>Hence, for upgrading the pay scales of the existing posts or for according any additional pay other than those laid down in the provisions contained in Sixth Pay Commission Recommendations approval of Govt. of India is required.</p>
3	Grant of Special Pay to All Administrative Posts.	<p>As per the provisions contained in FR-9(25), Special Pay means an addition, of the nature of pay to the emoluments of a post or of a Government Servant, granted in consideration of the special arduous nature of the duties or a specific addition to the work or responsibility.</p> <p>Hence, grant of special pay can be considered on merits based on the justifications furnished by the department on case to case basis.</p>
4	Promotion policy for recruitment as Lecturer in Polytechnic from 100% direct recruitment to 30% and 70% on promotion.	<p>As per the organizational chart of the report there is no post of lecturer shown.</p> <p>In case the proposed post is in the pay scale of PB-2 with grade pay of Rs.5400/- or PB-3 with grade pay of Rs.5400/- then this cell is of the view that approval of the UPSC is required for making RRs. The concurrence of Services Department is also required for the same.</p>
5	Grant of professional development for infrastructure and attending conferences.	<p>All the allowances will be regulated in accordance with the recommendation of the Sixth Pay Commission duly accepted by Govt. of India.</p> <p>Govt. of Delhi is not competent to grant any allowance over and above the recommendation made by the Sixth Pay Commission and duly accepted by</p>

		Govt. of India.
6	Enhancement of retirement age to 65 years	As per the provisions contained in FR 56(d), no Government Servant shall be granted extension in service beyond the age of retirement of 60 years. So amendment in FR-56 is required to enhance the retirement age, for which the powers vest with Ministry of Finance, Govt. of India.
7	Study leave to all Ex-cadre Staff	Study Leave would be admissible only as per the provisions contained in CCS (Leave) Rules.
8	Creation of Post of Training & Placement Officer	<p>Approval of AR &amp; Planning Department is required before offering any comments.</p> <p>In case the proposed creation is under Non plan, the approval of Honøble F.M., Cabinet and Honøble Lt. Governor is required.</p> <p>If the proposed creation is under Plan Head, the approval of Planning Department, Honøble F.M., Cabinet and Lt. Governor Delhi are required.</p> <p>Further, as far as the pay scales of the proposed posts are concerned, the department may ensure that the proposed pay scales are approved by the President for the post of similar character in Govt. of India/GNCT of Delhi. The Department should also ensure that the proposed pay scales would not create anomaly in the structured hierarchy of the department. The proposal may also be shown to Services Department before seeking the concurrence of the FD.</p>
9	Grading of Instructor as per DGE&T letter dt.19/05/2011	Since the said guidelines are not available in the file, FD is not in a position to offer any views/comments.

3.1 It is also stated that the queries raised by the Finance Department (respondent no.3) were clarified by respondent no.2, and the

matter was again referred to the Finance (Accounts) Department (respondent no.3) on 5.7.2013 for its opinion. On 19.7.2013 the Finance Department opined thus:

“The Committee on Career Advancement for staff in ITIs was constituted without any approval of the Competent Authority i.e. the Honøble LG, GNCT Delhi; as such the said committee has no power to recommend revision/upgradation of pay scales.

It further opined that, as far as revision of pay scales are concerned, pay of the employees of GNCT of Delhi are governed by the rules and regulations laid down by the Central Pay Commission.

As far as financial upgradation is concerned, same is granted to the employees of GNCT Delhi as per the guidelines issued by the GOI under MACP/ACP Schemes.

As per the existing delegation, Govt. of NCT Delhi has no power to upgrade the pay scales of the existing posts.”

Thereafter, respondent no.2 sent a copy of the recommendations of the said Committee to the DGE&T (respondent no.4). An agenda note was also submitted by respondent no.2 to respondent no.4 for discussion in the meeting of the NCVT. However, the agenda note was not placed in the meeting of the NCVT.

3.2 It is also stated that respondent no.2, vide its letter dated 30.1.2014, sought *ex post facto* approval of the Honøble Lt. Governor, GNCT of Delhi, to the constitution of the Committee on Career Advancement of Staff in ITIs, as the same was constituted earlier without the approval of the competent authority, i.e., Honøble Lt.Governor. On 6.2.2014 the Honøble LG, GNCT of Delhi, accorded *ex post facto* approval to the constitution of the said Committee. Thereafter, respondent no.2



resubmitted the file to respondent no.3 for approving the recommendations of the said Committee. However, respondent no.3 opined that the recommendations of the Committee might be sent to the All India Council of Technical Education (AICTE) for consideration.

3.3 It is also stated that after further discussion, respondent no.2 again moved respondent no.3 to take appropriate decision on the recommendations of the said Committee. But respondent no.3 again observed thus:

“The employees of ITIs, as in the case of other employees of GNCTD, are entitled to the pay and allowances which are recommended by the respective Central Pay Commission and duly accepted by the Government of India. They are governed under FRSR, CCS (Pension) Rules, CCS (Leave) Rules and CCS (CCA) Rules, etc.

As per the provisions contained in GOI's decision no.8 below Rule 11 of DFPR, the delegated powers for creation of posts, the power do not cover upgrading the pay scales of the existing posts. Hence, the approval of Ministry of Finance, GOI, is mandatory to upgrade the pay scale of the existing posts.”

3.4 It is also stated that while the matter stood thus, the applicant approached the Tribunal in the present O.A. seeking the reliefs as aforesaid.

4. Resisting the O.A., respondent no.4-DGE&T has filed a counter reply.

5. The applicant has filed rejoinder replies refuting the stand taken by respondent nos.1 to 4.

6. No counter reply has been filed on behalf of respondent nos. 5 and 6.

7. We have carefully perused the records, and have heard the applicant in person, and Mr.N.K.Singh and Mr.R.K.Sharma, the learned counsel appearing for respondent nos. 1 to 4.

8. It is relevant to mention here that copies of the entire report submitted by the QCI on the performance evaluation of Industrial Training Institutes/Industrial Training Centres (ITIs/ITCs), and the report submitted by the Committee on Career Advancement of Staff in ITIs have not been produced by the applicant before us, though his claim is mainly based on the purported recommendations contained in the said reports. However, along with his O.A. and rejoinder reply, the applicant has filed some portions/pages from the said reports.

9. At pages 89 and 90 of the report submitted by the QCI, which have been filed by the applicant, along with his O.A., the QCI mentioned as follows:

Following improvement suggestions have been suggested by the Institutes for improving the working of ITI/ITCs.

1. 40% of ITIs/ITCs complained that there are delays in sending NCVT certificates up to 12 months after the conduct of exams. They suggested that it should be brought down to 6 months. They also suggested that system of issuing Computerized Certificates should be started.
2. 50% of ITIs/ITCs suggested Annual Examination System should be changed to Semester wise examination.
3. 60% of ITIs/ITCs emphasized the need for improvement in Staff Deficiency.

**Other individual suggestions received from ITIs/ITCs are as follows:**

4. Exams should be conducted in local language as far as possible. Question Paper of CTS exams should be in local language.
5. Procedure for control of Question Paper Security with respect to Private ITCs needs to be improved.
6. Contents of subjects should be revised keeping in view present technologies and developments.
7. **Salary structure of Instructors and Staff is very poor.**
8. Power should be delegated to the Principals as done in the case of PPP Institutes.
9. Power to carry out minor civil works should be delegated to Principal instead of PWD.
10. Syllabus should be revised after every 5 years.
11. For 2 years of ITI Trades it is better to have exams on yearly basis.
12. Computer Awareness and English Speaking course should be compulsory for all trades.
13. Good Teachers and Instructors are taken away by Industries.
14. Feedback/Tracking of Passed Out Trainees.
15. There are no admissions in wireman and mechanical RTV Trade as per Sanctioned capacity. If instead of the two already sanctioned area, new affiliation were given in more popular trades, not only financial position of the Institute will improve, infrastructure facilities will also improve.
16. Fashion Technology should be included in the syllabus.
17. There is need for strengthening of tie ups between Industry and ITIs.
18. All Instructors and Teachers should be adequately trained (CTI Trained).
19. **Proper pay scales are required for instructors with due promotion policy.**
20. **Dignity and parity of Instructors of ITIs with their counterparts.**
21. **Instructors and Teachers are not satisfied with the job.**
22. Sports and games facilities are not up to mark. Sports events needs to be organized on regular basis.
23. Hygiene and Sanitation is in very poor state.

24. Recruitment policy should be revised.ö

In his pleadings, the applicant has termed the suggestions at sl.nos. 7, 19, 20 and 21 (supra) as suggestions of the QCI, though those suggestions were in fact received by the QCI from different Institutes.

10. It is the applicant's case that respondent no.2 had constituted a Committee on Career Advancement of Staff in ITIs, comprising of Dr.Narendere Kumar, Dr. Mohd. Emran Khan, Dr. Vimal Dimri, B.S.Negi, S.Augusthy, Sunil Sharma and Dr.G.N.Tiwari to examine the matter and submit a detailed report for implementation of the recommendations of the QCI. Though the Committee on Career Advancement of Staff in ITIs submitted its report in September 2011, respondent nos. 1 to 3 failed to complete the procedural formalities for implementation of the recommendations of the Committee till date.

11. There is material on record to show that the Committee on Career Advancement of Staff in ITIs was constituted by respondent no.2 without any approval of the competent authority, i.e., the Honøble Lt. Governor, GNCT, Delhi. Respondent no.2, vide its letter dated 30.1.2014, moved the Honøble Lt. Governor to accord *ex post facto* approval to the constitution of the said Committee. The Honøble Lt. Governor accorded *ex post facto* approval to the constitution of the said Committee only on 6.2.2014.

12. Along with his rejoinder reply to respondent no.4's counter reply, the applicant has filed copies of pages 17 to 22 of a report submitted

by Committee on Career Advancement of Teaching Faculty & other staff in Govt. ITIs/BTC of Delhi, which comprised of Mr.Rajiv Malik ó Principal (Chairman), Mr.A.K.Dhama ó Vice-Principal (Member), Mr.Ram Narain ó Group Instructor (Member), and **Mr.Arvind Yadav – Craft Instructor (Member),i.e., the applicant in the present O.A..** There is nothing on record to indicate as to whether or not the constitution of the Committee on Career Advancement of Teaching Faculty & other staff in Govt. ITIs/BTC of Delhi has been approved by the Lt. Governor of Delhi. In the absence of the entire report submitted by the said Committee, this Tribunal is also not in a position to know as to what were the terms of reference to the said Committee and as to whether the relevant materials were taken into consideration by the Committee while submitting its report.

13. The applicant has also not produced before us any material to show that the queries raised by the Finance Department (respondent no.3) have been fully clarified by respondent no.2.

14. The report submitted by the QCI might have contained several suggestions for improvement of the working of the Industrial Training Institutes/Industrial Training Centres established in different parts of the country. There might be some suggestions from the QCI for career advancement of the staff working in those IITs/ITCs. Neither the QCI nor the Committee on Career Advancement of Staff in ITIs is the expert body to consider and give any recommendation on the questions relating to conditions of service of the staff of the ITIs/ITCs, such as, academic grade

pay, incentives for higher qualifications, provision of special pay, promotion policy for recruitment as lecturer, grant of professional development, age of superannuation, study leave, creation of post, grading of Instructors, etc. The conditions of service of the applicant and other staff are regulated by different sets of statutory rules/orders made by the Government of NCT of Delhi and the Government of India. There is also some statutory restraint on the power of respondent nos. 1 to 3 either to reduce or to enhance the conditions of service of the applicant and other employees and officers working in ITIs. Therefore, we find no substance in the contention of the applicant that respondent nos. 1 to 3 have only to approve and implement the recommendations of the QCI/Committee on Career Advancement of Staff in ITIs.

15. The purported recommendations/suggestions contained in the report of the QCI and in the report of the Committee on Career Advancement for Staff in ITIs do not confer on the applicant or other similarly placed staff any right to claim academic grade pay, incentives for higher qualifications, provision of special pay, promotion policy for recruitment as lecturer, grant of professional development, age of superannuation, study leave, creation of post, grading of instructions. The applicant has not shown to us any rule or executive instructions issued by the appropriate authority laying down that such recommendations of the QCI and/or of the Committee on Career Advancement of Staff in ITIs are binding on the respondents, and that non-implementation of the purported

recommendations of the QCI and/or of the Committee by the respondents would amount to failure on their part to discharge any statutory obligation. Therefore, we do not find any substance in the contention of the applicant that the respondents have acted illegally and arbitrarily in not implementing the said recommendations. When the applicant has no right, far less an enforceable right, to claim implementation of the said recommendations, he cannot be allowed to seek a direction from the Tribunal or any Court to the respondents to complete the procedural formalities for implementation of the purported recommendation of the Committee on Career Advancement of Staff in ITIs within a reasonable period.

16. In **Asif Hameed & others v. State of J&K and others**, 1989 SCC Supl. (2) 364, the Honøble Supreme Court has held that when a State action is challenged, the function of the Court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution, and if not, the Court must strike down the action. While doing so, the Court must remain within its self-imposed limits. The Court sits in judgment on the action of a coordinate Branch of the Government. While exercising power of judicial review of administrative action, the Court is not appellate authority. The Constitution does not permit the Court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive.

17. In **Mallikarjuna Rao v. State of A.P.**, (1990) 2 SCC 707, the Honøble Supreme Court has held that Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule-making power of the executive under Article 309 of the Constitution of India.

18. It has been held by the Honøble Supreme Court in **Technical Executive (Anti-Pollution) Welfare Association v. Commissioner of Transport Department and another**, (1997) 9 SCC 38, that it would be for the appropriate Government to take policy decision. The Tribunal is not competent to give any direction to the Government to lay down any policy. Such a direction would amount to encroaching upon area of policy-making which is exclusively within the purview of the Government.

19. In **P.U.Joshi and others, etc. vs. The Accountant General, Ahmedabad and others**, etc., (2003) 2 SCC 532, the Honøble Supreme Court has held thus:

õQuestions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenue of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service



and after or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.ö

20. After having given our anxious consideration to the facts and circumstances of the case in the light of the decisions of the Honøble Apex Court referred to in paragraphs 16 to 19 above, we have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed.

21. Resultantly, the O.A. is dismissed. No costs.

**(K.N.SHRIVASTAVA)**  
**ADMINISTRATIVE MEMBER**

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

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