

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00641/2015

Tuesday, this the 26th day of March, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Smt. Janaki Menon, aged 62 years, W/o. C.K. Menon,
 Librarian (Retired), Kendriya Vidyalaya, Thrissur,
 Puranattukara PO, Residing at Vrindavan, Odath Line,
 Thiruvambady, Thrissur – 68002.

..... **Applicant**

(By Advocate : Mr. P.V. Mohanan)

V e r s u s

1. The Commissioner, Kendriya Vidyalaya Sangathan,
 18, Institutional Area, Shahid Jeet Singh Marg,
 New Delhi – 110 602.
2. The Deputy Commissioner, Kendriya Vidyalaya Sangathan,
 18, Institutional Area, Shahid Jeet Singh Marg, New Delhi-110 602.
3. The Deputy Commissioner, Kendriya Vidyalaya Sangathan,
 Regional Office, Ernakulam.

..... **Respondents**

(By Advocate : Mr. K.I. Mayankutty Mather)

This application having been heard on 14.03.2019, the Tribunal on
 26.03.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant is as under:

“i. Call for the records leading to Annexure A2 and declare that the applicant is entitled to be granted Selection Grade scale of pay of Rs. 15600-39100/- with Grade Pay of Rs. 5400/- on completion of 24 years of service in Trained Graduate Teacher cadre by taking note of commencement of service from 9.9.1985 i.e. with effect from 9.9.2009 with all consequential benefits including revised pay scale as recommended by the Sixth Central Pay Commission with effect from 1.1.2006 and to have her

pension re fixed after fixation of pay in the Selection Grade.

- ii. To direct the respondents to include the name of the applicant in Annexure A2 Eligibility list and to grant the scale of pay in the Selection Grade on due date.
- iii. To direct the respondents 1 and 2 and to consider and dispose of Annexure A3 representation forthwith.
- iv. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.”

2. The brief facts of the case are that the applicant commenced his service as a Trained Graduate Teacher (Biology) in Kendriya Vidyalaya Sangathan on 9.9.1985. She retired on superannuation on 30.4.2013 in the cadre of TGT after rendering 27 years, 7 months and 22 days of qualifying service. The terminal benefits due to the applicant were fixed by reckoning the qualifying service as TGT from 9.9.1985 onward. The applicant was entitled to get selection grade scale of pay on completion of 24 years of service in the category of TGT as envisaged in the order issued by the Government of India, Ministry of Human Resource Development and as clarified by letters dated 3.11.1987 and 6.2.1989. Accordingly, the replacement scales were given to the school teachers in all Union Territories (except Chandigarh) including Government aided school and organization like KVS in the revised pay scale namely TGT, Headmaster of primary school to senior scale (after 12 years) and selection scale (after 12 years) in the senior scale. The applicant admittedly had completed 24 years of qualifying service in the cadre of TGT on 9.9.2009. However, she was not granted senior grade w.e.f. 9.9.2009. When the DPC met in the month of January, 2015 about 808 TGTs were granted selection grade. The name of

the applicant was not included in the list though she had completed 24 years of qualifying service on 9.9.2009. Aggrieved the applicant has filed the present Original Application.

3. Notices were issued to the respondents. They entered appearance through Shri K.I. Mayankutty Mather who filed a detailed reply statement in the matter.

4. Heard Shri P.V. Mohanan, learned counsel appearing for the applicant and the Standing Counsel for the KVS Shri K.I. Mayankutty Mather with Shri Vineeth Komalachandran for the respondents at length and perused the records, legal provisions and legal citation cited before us.

5. The question raised before us by the applicant herein are two fold : firstly whether she is entitled to be considered for grant of selection grade in the scale of pay of Rs. 15,600-39,100/- with GP of Rs. 5,400/- on completion of 24 years of service in Trained Graduate Teacher cadre from 9.9.1985 or not and secondly whether her name could have been included in the eligibility list Annexure A2 or not ?

6. Learned counsel for the applicant Shri P.V. Mohanan argued that the right to be considered for promotion is a fundamental right as per the judgment of the apex court in the matter of *Ajith Singh & Ors. v. The State of Punjab & Ors.* - AIR 1999 SC 3471. A committee was constituted under the chairmanship of Professor D.P. Chattopadhyaya who made

recommendations concerning the pay and service conditions of teachers at school level. These recommendations were accepted and implemented. As per the recommendations the TGTs/Headmasters of Primary School were granted senior scale after 12 years and selection grade after 12 years in senior scale. The applicant had completed 24 years of qualifying service in the cadre of TGT on 9.9.2009 and was granted senior scale w.e.f. 1.9.1997.

7. While working as Biology teacher applicant fell ill with severe brain related disease and became partially disabled and she had been accommodated in the post of Librarian in terms of the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996. She joined the post on 5.12.2009. He further submitted that Librarian post falls in teaching category, so on completion of 24 years of service she should have been considered for grant of selection grade in the scale of pay of Rs. 15,600-39,100/- with Grade Pay of Rs. 5,400/-. In support of his argument he cited Rule 20 of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the Act, 2016) which reads as under:

“20. (1) No Government establishment shall discriminate against any person with disability in any matter relating to employment: Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

(2) Every Government establishment shall provide reasonable accommodation and appropriate barrier free and conducive environment to employees with disability.

(3) No promotion shall be denied to a person merely on the ground of disability.

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(5) The appropriate Government may frame policies for posting and transfer of employees with disabilities.”

8. On the other hand Mr. K.I. Mayankutty Mather along with Shri Vineeth Komalachandran submitted that for grant of selection grade the basic condition is 12 years service in senior scale of the same cadre and attending 21 days in service course during a period of 6 years before the date on which selection grade is due. Applicant attended the service course only in 1992 at the time of grant of senior scale to her. The counsel for the respondents further submitted that the applicant was absent on two occasions for a total period of five years i.e. from 29.8.2003 to 1.4.2005 and 7.8.2006 to 9.12.2009. So she is not entitled for selection grade.

9. The respondents' first contention that she had not underwent the training for 21 days in the last six years cannot be taken as a ground for denying the selection grade because this training for teaching staff is to sharpen their teaching skills. However, the applicant is now working as Librarian so that training would not be essential in her case. Even otherwise she already underwent the training prior to 6 years when she was due for senior scale. When respondents have considered her case on compassionate ground for her posting as Librarian then training as teacher is not deemed to

be necessary. This ground is not tenable under the law as Hon'ble apex court in the matter of *Ajith Singh's* case (supra) held that the right to be considered for promotion is a fundamental right as the same cannot be taken away so lightly as done in the present case. Moreover, as per Section 20(3) no promotion shall be denied to a person merely on the ground of disability. (emphasis underlined). The legislative mandate is clear that a person should not be discriminated on the ground of disability. So applicant in any case could not attend the training because of her illness and the same should not come in the way of her consideration for the next higher scale/selection grade.

10. As regards the second point raised by the respondents that her absence for two spells for larger period i.e. from 29.8.2003 to 1.4.2005 and 7.8.2006 to 9.12.2009 we find that this Tribunal have already directed the respondents to treat the said period as leave on medical grounds with all consequential benefits vide its order dated 7.2.2013 in OA No. 824 of 2011 which was upheld by the Hon'ble High Court of Kerala by dismissing the appeal so filed by the respondents through OP (CAT) No. 3708 of 2013 dated 28.10.2013.

11. Further she could not be considered for selection grade on account of non-availability of last 5 years ACRs. For this her previous five years ACRs which are available with the respondents shall be taken into consideration for grant of selection grade.

12. In view of the above facts and circumstances and legal position of the case, we are of the view that the present Original Application has merits on its side and deserves to be allowed. Hence, we allow the OA. The respondents are hereby directed to consider the case of the applicant for grant of selection grade keeping in view the observations made by us in the preceding paragraphs within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00641/2015

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of the order File No. (56) Pension/2012-13/KVS(EKMR)/6160 sanctioning Pension and Death Gratuity dated 21.1.2014.
- Annexure A2** – True copy of the relevant portion of proceeding dated 6.2.2015.
- Annexure A3** – True copy of the representation dated 27.4.2015.
- Annexure A4** – True copy of the medical certificate along with covering letter No. C3-10810/09/DMOH dated 24.9.2009.
- Annexure A5** – True copy of the proceedings No. F.17-2/2007/KVS(HQ) (Estt.II), dated 23.11.2009.
- Annexure A6** – True copy of the order in OA No. 824/2011 dated 7.2.2013.
- Annexure A7** – True copy of the judgment in OP (CAT) No. 3708/2013 dated 28.10.2013.
- Annexure A8** – True copy of the medical report and certificate issued in Form-III under Rule 4 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.

RESPONDENTS' ANNEXURES

- Annexure R3(a)**– True copy of the circular No. F.5-180/86-UT-1 issued by the Ministry of Human Resources Department (MHRD).

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