

**Central Administrative Tribunal
Principal Bench**

OA No.1386/2016

Reserved on : 07.03.2019
Pronounced on : 05.04.2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

S. K. Shrivastava
S/o Late B. P. Shrivastava
Aged about 59 years,
R/o 2/8 Aryabhat Enclave,
Ashok Vihar, P-III, Delhi 110 052,
Currently working as Foreman Instructor
Mechanical Engineer Group-A at
Aryabhat Polytechnic, G.T.K. Road,
Delhi 110 033. Applicant.

(By Advocate : Shri A. K. Behera)

Vs.

1. Govt. of NCT of Delhi
Through its Chief Secretary
New Secretariat near Indira Gandhi Stadium
IP Estate,
New Delhi 110 001.
2. The Secretary
Directorate of Training & Technical Education
Muni Maya Ram Marg,
Near TV Tower, Pitampura,
New Delhi 110 088.
3. The Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi 110 069.
4. The Director
Directorate of Training & Technical Education
Muni Maya Ram Marg,
Near TV Tower, Pitampura,
New Delhi 110 088.

5. The Principal
 Government of NCT of Delhi
 Aryabhat Institute of Technology
 GT Karnal Road, Delhi 110 033.

6. The Chairman
 All India Council of Technical Education
 7th Floor Chandralok Building,
 Janpath, New Delhi 110 001. ... Respondents.

(By Advocate : Shri Amit Anand)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant was appointed as a Foreman Instructor (FI) Mechanical Engineer in the Directorate of Training and Technical Education, New Delhi, the 1st respondent herein, on 07.03.1994. Through letter dated 19.06.2015, he was informed that he would retire from service w.e.f. 30.04.2016, on attaining the age of superannuation. Thereafter, he made a representation stating that he is entitled to continue in service up to the age of 62 years, on par with Lecturers in Polytechnics. That was rejected through letter dated 02.12.2015 by the respondents. On 19.01.2016, the applicant was required to submit necessary documents/information for processing his retirement benefits. This OA is filed challenging three communications, referred to above, and for a declaration that he is entitled to hold a Teaching Post/Lecturer, together with the benefit of Career Advancement Scheme (CAS) framed by the All India Council of Technical

Education (AICTE). A prayer is also made for extension of the benefits of revised pay scale attached to the post of Lecturer (Senior Scale).

2. The applicant contends that the post of FI is the one, which carries the duties of teaching, and in terms of regulations framed by the AICTE, he is entitled to be extended the benefit of CAS and attached scale of pay, together with the enhanced age of superannuation. It is also pleaded that the post is included in the category of Teaching Staff in the Order dated 24.10.1997 issued by the 1st respondent. The applicant contends that in the advertisement issued at the time of his recruitment, it was clearly mentioned that the post would involve the activity of teaching and there is absolutely no basis for the respondents in denying the benefit to him.

3. On behalf of the respondents, a detailed counter affidavit is filed. It is stated that the post of FI is associated with the workshop establishment and the question of its being treated on par with the post of Lecturer does not arise. According to them, promotion from the post of FI is to the post of Workshop Superintendent (WS), which carries a higher scale of pay. It is further stated that the impugned proceedings were issued in consonance with the Recruitment Rules and the Scheme framed by the AICTE,

and that no interference is warranted. Reliance is placed on the judgment of the Delhi High Court in W.P. (C) No.5044/2012.

4. We heard Shri A. K. Behera, learned counsel for the applicant and Shri Amit Anand, learned counsel for the respondents.

5. The applicant was appointed as FI on temporary basis through order dated 07.03.1994 in the pay scale of Rs.2200-4000, and his services were made permanent through order dated 24.10.1997. The Scheme for CAS in the Technical Institutions was framed by the AICTE in the year 1999 on the recommendations of a committee constituted in this behalf. It provided for various benefits such as promotion from one category of post to another on completion of a particular length of service, enhancement of age of superannuation from 60 to 62 years. It is also stated that the AICTE itself clarified on 19.05.2016 stating that the post of FI in Polytechnics is of the rank of Lecturer, and accordingly shall carry the pay scale of Rs.8000-275-13500/-, and despite that the respondents did not extend the benefit. By citing Office Order dated 29.07.2010, the applicant claims the benefit of enhancement of age of superannuation up to 65 years.

6. If one goes by the nomenclature of the post that was held by the applicant, one gains an impression that it is purely a workshop related post. However, a perusal of various documents filed in the OA makes it clear that the activity of teaching was also associated with it. To begin with, reference can be made to the very advertisement that was issued in the year 1993. As regards the post of FI, under the heading "DUTIES", it was mentioned as under:-

"Teaching and allied"

On 24.10.1997, the Government of Delhi issued proceedings for conversion of temporary Class A, B, C & D posts into permanent posts in the Polytechnics and other similar institutions. The posts were divided into Category-A (Teaching Staff) and Category-B (Non-Teaching Staff). In Category-A, the posts of Principal, Head of Department, Lecturers and Foreman Instructor are included. In other words, the post of FI was treated as the part of teaching establishment in the company of the post of Lecturer.

7. The AICTE framed CAS in Diploma level Technical institutions. There is no specific reference to the post of FI in this Scheme. It is relevant to mention that the post of Librarian and Physical Instructor were treated as falling within the teaching category. In Clause 12 of the Scheme, they too were extended the benefit of enhanced age of

superannuation of 62 years on par with Lecturers. A doubt arose as to whether the benefit of CAS can be extended to the post of FI, in view of a letter addressed to the AICTE. It was clarified on 24.05.2016 as under:-

“Subject : Application under Right to Information Act, 2005.

Sir,

Please refer to your application dated 21.4.2006 requesting for information under Right to Information Act. The following information is being conveyed on the basis of AICTE’s Norms and Standards notified for Technical Education:

1. The posts of Training and Placement Officer, Workshop Superintendent are equivalent to the post of Head of Department.
2. The post of Foreman is equivalent to the rank of Lecturer. Hence for above categories benefit of enhancement of age of superannuation from 60 to 62 years has been recommended vide AICTE’s notification F.No.1-65/CD/NCE/98-99 dated 30.12.1999.
3. Regarding Workshop Instructor, no equivalency to teaching post exists. Hence, benefit of enhancement of age of superannuation is NOT recommended.”

The cumulative effect of the relevant clauses in all these documents referred to above is that the post of FI was treated as forming part of the teaching establishment.

8. An argument is advanced on behalf of the respondents that the post of WS is superior to the post of FI; and when a WS cannot be treated as a part of teaching establishment, the question of a inferior post of FI being

treated as such, does not arise. Reference is also made to the clarification issued by the AICTE on 01.03.2003 to the effect that it cannot prescribe the qualification and pay scales for the posts of WS, FI, System Analyst and Computer Programmers, etc.

9. It may be true that the post of WS is superior in terms of emoluments to that of FI. However, if one takes into account, the nature of duties attached to the post of FI, and the manner in which, it was treated by the respondents as well as the AICTE, it becomes clear that it was treated as part of teaching establishment.

10. In OA No.1909/2003, Principal Bench of this Tribunal dealt with a case of FI who was promoted from the post of WS. It was held that if a FI possesses the qualification of Degree in Engineering, he shall be entitled to be designated as Lecturer. It is not in dispute that the applicant herein possesses the qualification of Degree in Engineering since inception.

11. It is no doubt true that in its judgment dated 11.03.2013 in W.P. (C) No.5044/2012, the Hon'ble Delhi High Court took the view that an FI can only claim promotion to the post of WS which holds the pay scale of a Sr. Lecturer and not to the post of Sr. Lecturer. That,

however, was in respect of an FI who was appointed sometime in the year 1963, and when the duties of teaching were not associated with that post, and at a time when the proceedings dated 29.07.2010 issued by the respondents or the Scheme framed by the AICTE did not apply to the post. None of the proceedings referred to above were brought to the notice of the High Court.

12. Since the applicant has already crossed the age of 62 years, the only relief that can be granted to him is that he shall be treated as having retired from the post of Lecturer in Polytechnic with the pay scale attached to that, and his pension and other retiral benefits need to be determined accordingly. Since he did not claim promotion under CAS to the post of Sr. Lecturer, the question of granting it after retirement does not arise.

13. We, therefore, partly allow the OA. The respondents are directed to treat the applicant as having retired from the post of Lecturer in Polytechnic with the pay scale attached to it. His pension and other retiral benefits shall be notional but the revision of pay scale shall be prospective in nature without any entitlement for arrears. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/