

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.2284/2003

This the 4th day of June, 2004

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI S.K.NAIK, MEMBER (A)

M.R.Sehgal S/O Hans Raj Sehgal,
R/O 258, Street No.9,
Joshi Road, Karol Bagh,
New Delhi. Applicant

(By Shri Ashwani Bhardwaj, Advocate)

-versus-

1. Govt. of NCT of Delhi through
Chief Secretary,
GNCT of Delhi,
Secretariat, I.G.Stadium,
New Delhi.
2. Joint Secretary (TTE),
Govt. of NCT of Delhi,
Directorate of Training & Technical
Education, Muni Maya Ram Marg,
Pitampura, New Delhi-110088.
3. Director,
Directorate of Training & Technical
Education, Muni Maya Ram Marg,
Pitampura,
New Delhi-110088. Respondents

(By Shri Ram Kanwar, Advocate)

O R D E R

Hon'ble Shri Justice V.S.Aggarwal :

The applicant (M.R.Sehgal) joined as Instructor (Maths) in the Directorate of Training & Technical Education. He was granted selection grade w.e.f. 1.1.1981 on basis of his seniority. He was drawing the maximum of the scale of Rs.1640-2900. By virtue of the present application, he seeks quashing of the order of 26.6.2003 and for grant of in situ promotion from 1.4.1991 with consequential benefits.

As Ag

2

2. Some of the other relevant facts can conveniently be stated. The applicant had superannuated in January, 2002. However, his plea is that other similarly situated persons like Shri V.Swaminathan and Shri Swaran Singh had been given the same benefit which has been denied to the applicant. The applicant had represented. At that time his representation was rejected stating that in situ promotion and selection grade cannot be granted simultaneously. He had filed OA No.2752/2001. The same was disposed of with the direction to consider and decide the representation of the applicant by a speaking order. Presently, vide the impugned order, it has been asserted that the claim of the applicant has again been rejected. Applicant pleads that he is entitled to in situ promotion which is within Group 'C' scale and the plea of the respondents, besides being discriminatory, is illegal.

3. The application has been contested. The respondents plead that applicant had opted for Assured Career Progression Scheme and had consciously chosen to receive the benefits under the said Scheme on the implementation of the Fifth Central Pay Commission. He has been granted the benefit of the said Scheme. Respondents' plead that employees who have received the selection grade are eligible for in situ promotion only if ordinary scale of pay and selection grade consequent upon revision of the pay scale are the same. In case of the applicant, the ordinary pay scale and the selection grade are different. They also contend that in terms of the Ministry of Finance clarification/instructions of

LSAg

25.5.1992 employees stagnating at the maximum of the scale for more than a year cannot be allowed in situ promotion in the next higher grade which happens to be a Group 'B' post. Applicant is seeking in situ promotion in the scale of Rs.6500-10500 which is a scale of Group 'B'. So far as Shri V. Swaminathan and Shri Swaran Singh are concerned, the respondents plead that on basis of the approval of the Ministry of Human Resource Development, which was based on representation of Group 'C' staff of Polytechnic Lecturers and on recommendations of Madan Committee recommendations, such a benefit has been given. The applicant cannot claim the same.

4. We have heard the parties' counsel and have seen the relevant record.

5. In pursuance of the directions of this Tribunal in OA No.2752/2001, the representation of the applicant has been rejected and the said order reads :

"Hon'ble CAT has passed an Order in O.A. No.2752/2001 filed by M.R.Sehgal, Math Instt. (Retd.) wherein the respondents have been directed to pass a speaking Order on the representation dated 18.02.2000 of Sh. M.R. Sehgal.

The representation of Sh. M.R.Sehgal, Math Instructor (Retired) has been examined in consultation with Finance Department and Services Department of Govt. of NCT of Delhi. It has been observed that Sh. M.R.Sehgal Math Instructor (Rtd.) has already been granted benefit of selection grade w.e.f. 01.01.81 in the pay scale of Rs.740-880 (Revised Rs.1640-2900) and has also been granted benefit of first stagnation increment w.e.f. 01.01.92. As per Instructions of Govt. of India M.F. O.M. No.10(1)/E-III/88 dated 25th May 1992, a group 'C' employee stagnating at the maximum of scale of pay for more than a year cannot



be allowed in-situ promotion to the next higher grade which happens to be a Group 'B' scale.

Sh. M.R. Sehgal Math Instructor (Retd.) was stagnating in pay scale of Rs.1640-2900 (pre-revised) as on 01.01.90 and granted benefit of first stagnation increment w.e.f. 01.01.92. The next pay scale in which In-situ Promotion could be considered is the pay scale of Rs.2000-3200 (pre-revised) happens to be a Group 'B' pay scale as per revised classification of post contained in Govt. of India, DOP&T Notification No.13012/2/2/87-Est.(D) dated 30th June 1987.

The case of Sh. V. Swaminathan & Sh. Swaran Singh is different as they belong to technical wing where the hierarchy of cadres is different. In their case the post in next higher grade in hierarchy happens to be a group 'C' post.

In view of the facts and Rule position, Sh. M.R. Sehgal, Math Instt. (Retd.) is not entitled to grant of in-situ promotion as per his representation. Sh. M.R. Sehgal is informed accordingly."

6. Though an attempt is being made to state that the case of V. Swaminathan and Swaran Singh is on a different footing, we find no reason to accept this particular contention of the respondents. This is for the reason that applicant's plea is being rejected on basis of the office memorandum No.10(1)/E-III/88 dated 25.5.1992. Acting on the said O.M., V. Swaminathan and Swaran Singh had been granted the abovesaid scale and the benefit. This is apparent from the order copy of which is Annexure A-4. To that extent we would accept the plea of the applicant.

7. However, can it be stated that if erroneously benefit has been given to one person, all must get the same. The office memorandum of 25.5.1992 to which we



have referred to above mentioned point of doubt No.8.

The same reads :

"Point of Doubt 8. - Whether a Group 'C' employee stagnating at the maximum of the scale of pay for more than a year can be allowed in situ promotion to next higher scale which happens to be a Group 'B' scale.

Clarification. - No."

It clearly shows that when a Group 'C' employee is stagnating at the maximum of the scale of pay for more than a year, he cannot be allowed in situ promotion in the next higher scale of Group 'B'. The scale of Rs.2000-3200 (pre-revised) is a Group 'B' scale. Therefore, it must be held that the applicant was not entitled to the said benefit, keeping in view the said instructions of the Government of India.

8. If the said instructions had been violated in case of V.Swaminathan and Swaran Singh and they have been given a benefit wrongly, we find no reason as to why the wrong should be perpetuated. If one person gets the benefit contrary to the decisions which are not being challenged before us, it does not imply that all other persons must be given the said benefit. Thus, it cannot be stated that applicant can claim discrimination. To the same effect is the decision of the Supreme Court in the case of **State of Bihar v. Kameshwar Prasad Singh & Anr.**, 2000 SCC (L&S) 845. The Supreme Court held :

"30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgement passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in **Gursharan Singh v. New**



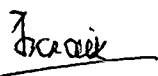
Delhi Municipal Committee, (1996) 2 SC 459 held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed: (SCC p.465 para 9)

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."


Again in Secy. Jaipur Development Authority v. Daulat Mal Jain, (1997) 1 SCC 35 this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp.51-52, para 28)

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

9.. For these reasons, OA being without merit fails and is dismissed.


(S. K. Naik),
Member (A)

/as/


(V. S. Aggarwal)
Chairman