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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2651/2003

New Delhi this the 13 th day of October, 2004

**Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)**

Dr. C.L. Meena,
S/o Late Shri N.L.Meena,
Resident of B-5/51, Sector-4,
Rohini, Delhi-110085
And employed as:
Officiating Head of Department (Applied Art),
In the College of Art, 20-22, Tilak Marg,
New Delhi-110001

Applicant

(By Advocate Shri B.B.Raval)

VERSUS

1. Govt. of National Capital Territory of Delhi
Through: The Chief Secretary, Indraprastha
Sachivalaya, I.P. Estate, New Delhi-110002
2. The Principal Secretary,
Department of Training and Technical Education,
Muni Maya Ram Marg, Pitam Pura, Delhi-110088
3. The Principal,
College of Art, 20-22, Tilak Marg,
New Delhi-110001

Respondents

(By Advocate Shri George Paracken)

O R D E R

(Hon'ble Mr. S.A. Singh, Member (A))

The applicant was appointed as Lecturer (Senior Scale) in Commercial Art, College of Art, Directorate of Training and Technical Education, New Delhi on 23.4.1979 and was granted merit promotion to the post of Assistant Professor with effect from 1.1.1988.

2. The grievance of the applicant is that he has not been granted the pay and allowances for the post of Head of the Department and Professor, even though he was

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directed to take over the charge of the Head of the Department of Applied Art w.e.f. 18.3.1997 vide order dated 17.3.1997 and that he had been working in this post continuously since that date.

3. The applicant pleaded that he was asked to take over the charge of the Head of the Department w.e.f. 18.3.1997 because the then Professor N.C. Sen. Gupta was appointed as the Principal of the College of Art. He has been officiating in this post of Professor and Head of the Department from that date in addition to his normal duties but he has not been paid the pay and allowances, for which he is legally entitled. He relies strongly on the case of **Prem Prakash Vs. Govt. of National Capital Territory of Delhi through its Chief Secretary and Ors** (OA No. 2651/2001) judgement given on 19.3.2002 and also on **R.L.Yadav Vs. Govt. of National Capital Territory of Delhi and Others** (OA 1687/2000). In support of his contention that he has been working as Head of the Department, he has placed on record some notice dated 10.4.2001 showing him as HOD's of BFA; similarly order dated 24.7.2001 where he has been shown offic. HOD (AA/BFA). He relies upon the ratio in the case of **Selvaraj Vs. Lt. Governor of Island, Port Blair and Others** (1998) 4 SCC 291) wherein it was held that when an employee is required to look after the duties of the higher post, he is entitled to pay of the higher post even if this was not to be treated as a promotion. He was, therefore, entitled for the pay and allowances of the higher post.

4. This was strongly contested by the respondents pointing out that it is factually incorrect that the order dated 17.3.1997, issued by the Principal, College of Art, Govt. of Delhi was an order directing him to take over the charge of BFA, Applied Art. This order was merely an order communicating that he was to look after all academic as well as maintenance duties of the Department. The order does not state that he has been appointed as Professor and Head of the Department. Moreover, only Professors are made Head of the Department and they are recruited 100% through the UPSC. The Principal,



College of Art or the Department of Training and Technical Education is not competent to appoint any Lecturer/ Assistant Professor to the post of Professor.

5. It is a normal administrative practice that if the post of Professor in any Department is vacant, then Senior Assistant Professor is appointed as officiating incharge and if the post of both Professor and Assistant Professor are vacant, then senior most Lecturer is appointed to look after the work as incharge of the Department. Therefore, there is no question of payment of the salary and allowances attached to the post of Professor to the applicant.

6. The respondents pleaded that the case of **Prem Prakash Vs. Govt.of NCT of Delhi** was distinguishable as this case pertained to Polytechnic under Govt. of Delhi which are diploma level institutions, there is post with the designation as HOD, whereas in College of Arts and other degree level technical institutions under the Govt.of Delhi, no such post exists. In the College of Arts only Professors are appointed as HOD's and the appointment on the said post is by way of 100 % direct recruitment through UPSC. They added that in the case of **R.L.Yadav Vs. Govt.of National Capital Territory of Delhi and Others (supra)** the Government had preferred an appeal before the Hon'ble Delhi High Court against the order of the Tribunal and the same was still pending.

7. In the rejoinder, the applicant stated that it is incorrect that Professors are only appointed through the UPSC as the answering respondent i.e. the Principal, College of Art was not appointed as a direct recruit but was appointed on merit promotion. Moreover, that the applicant is eligible to the post of Professor after eight years regular service as Assistant Professor which he had already completed on 1.1.1996 and as such this officiating order making Head of the Department is in order and he is entitled to the pay scale of the Head of the Department for having performed the duties of the Head of the Department. It is not a question of appointing the applicant as HOD and nor has he



claimed the appointment to the post of Head of the Department Professor but payment in the higher scale.

8. We have heard the learned counsel for the parties and have gone through the documents on record. The short question before the Tribunal is whether the order dated 17.3.1997 is an order appointing the applicant as Head of the Department. Copy of the order is reproduced below:

"Shri C.L.Meena, Asstt. Prof. BFA. Applied Art. will be the incharge of BFA. Applied Art, w.e.f. 18/3/97. He will look after all academic as well as maintenance of the Deptt. in consultation with the undersigned. He will also monitor the attendance of the teaching faculty and to submit the same at the end of each month".

On the plain reading of the above order, it is clear that the applicant is Assistant Professor, BFA, Applied Art will be incharge of BFA. The order does not state that he has been appointed as Head of the Department.

9. The respondents placed before us Organizational Structure/Chart wherein it is shown that College of Art was headed by the Principal and that there are 3 faculties in College of Art and each of the faculties has two courses, one at the Bachelor level and other at the Masters Level. Thus, these 3 faculties have the following 6 courses:

- (i) Bachelor of Fine Art in Painting
- ii) Bachelor of Fine Art in Sculpture
- (iii) Bachelor of Fine Art in Applied Art
- (iv) Masters in Fine Art in Painting
- (v) Masters in Fine Art in Sculpture
- (vi) Masters in Fine Art in Applied Art

Each of the above courses is headed by the Senior-most Faculty Member under the overall supervision of the Principal. The respondents have pointed out that **these** incharges are also called, in Administrative parlance, as Heads of Departments of the respective Faculties/ Courses though not having been so appointed. They do not have any additional monetary powers or benefits. They do not discharge the powers of the Head of Department as envisaged under Rule 2 (xvi) of General Financial Rules, 1963.

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10. We also find that OA No. 2651/2001 would not assist the applicant because it is distinguishable. The OA 2651/2001 deals with the Heads of the Department of Polytechnic. The Organizational Structure/Chart in Polytechnic is different from that of the College of Art. Similarly, the case of **Selvaraj Vs. Lt.Governor of Island, Port Blair and Others (supra)**, would not come to the help of the applicant as it is also distinguishable.

11. In view of the above, we find that the OA is without merit and is accordingly dismissed. No costs.



(S.A. Singh)

Member (A)



(V.S. Aggarwal)

Chairman

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