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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 2626/2006

MA No. 1168/2009

With

OA No. 2657/2003

New Delhi, this the 20th day of January, 2010

**HON'BLE MR. JUSTICE V.K.BALI, CHAIRMAN
HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)**

OA No.2626/2006

Hari Ram Aggarwal
S/o Sh. M.C.Aggarwal
R/o B-25, Old Gobind Pura,
Delhi-110051.

... Applicant

(By Advocate: Shri K.K.Sharma)

Versus

1. Chief Secretary,
Government of NCT of Delhi,
Delhi Secretariat,
I.P.Estate,
New Delhi.
2. Secretary (Education),
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.
3. Director of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.

... Respondents

(By Advocate: Sh. Rishi Prakash)

OA No.2657/2003

Hari Ram Aggarwal
R/o B-25, Old Gobind Pura,
Delhi-110051.

... Applicant

(By Advocate: Shri K.K.Sharma)

Versus

Government of NCT of Delhi,

1. Secretary (Education),
Old Secretariat,
Delhi-110054.

2. Director of Education,
Old Secretariat,
Delhi-110054.

...Respondents

(By Advocate: Sh. Amandeep Singh for Ms. Jyoti Singh)

ORDER

Mr. L.K. Joshi, Vice Chairman(A):

The sole grievance in this OA is that he was not granted the benefit of first and second upgradations under the Assured Career Progression (ACP) Scheme, although he had completed 32 years of service by 9.08.1999, the date of initiation of the ACP Scheme and he was eligible for such upgradation.

2. The Applicant joined service as Trained Graduate Teacher (TGT) under the Directorate of Education, the third Respondent in the OA on 13.11.1967. He acquired post graduate degree in Physics in 1972. Acquisition of post graduate degree in the subject being taught by the TGT is requisite for promotion to the next grade of Post Graduate Teacher (PGT). The ACP Scheme envisages two upgradations after 12 and 24 years of service to the promotional grade, if an employee does not get any promotion during this period and he has the essential eligibility qualifications for promotion. The Applicant retired on superannuation on 31.12.2003.

3. The Applicant had earlier approached this Tribunal through OA number 2657/2003. The Applicant filed an MA number 61/2004 in the aforesaid OA in which he, *inter alia*, stated that the authorities had assured him to consider his case for grant of ACP and sought permission for withdrawal of the OA with liberty to file afresh. However, by order dated 12.01.2004, the "OA was dismissed as withdrawn". When the instant OA was filed, objection was raised by the Respondents that the OA was not maintainable as no permission was granted for fresh filing of

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the OA and it had been dismissed as withdrawn. The Applicant, thereupon prayed through MA number 789/2008 and Review Application number 180/2008 for correction in the order in OA number 2657/2003 and grant him liberty to file a fresh Application. By order dated 27.04.2009, the prayer in the MA for correction in the order in OA number 2657/2003 was allowed.

4. The relevant ACP Scheme as applied to the teachers under the Respondents have been quoted below:

- “(i) The financial up-gradation under this scheme is to be given from 9th August, 99 i.e. the date from which the scheme is applicable strictly in accordance with the Government of India, DOPT O.M.No.35034/1/97-Estt.(D) dated 9th August, 1999 and subsequent clarifications issued from time to time.
- (ii) Under this scheme first financial up-gradation is to be given after the completion of 12 years on or after 9.8.99 from the date of appointment as direct recruit and second up-gradation is to be given after completion of 24 years of service on or after 9.8.99.”

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“11.1 Fulfilment of normal promotion norms (including educational qualifications as per Recruitment Rules) for grant of financial up-gradation, performance of such duties as are entrusted to the employees together with retention of old designations financial up-gradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (HBA, allotment of govt. accommodation, advances etc.) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputations to higher posts etc.) shall be ensured for grant of benefits under ACP Scheme.

11.2 Under the Scheme, two financial Up-gradations shall be available, only if no regular promotions during the prescribed period (12/24 years) have been availed of by an employee. If an employee has already got one regular promotion, he shall qualify for the second one on completion of 24 years. In case two regular promotions have already been received, no benefit shall be available under this scheme.”

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“25. Refusal of Promotion – An employee who has not accepted the normal “Vacancy-based” Promotion shall not be entitled for upgradation under the scheme unless he accepts the

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regular promotion after completing the period of debarment on refusal of promotion. The condition is applicable for 1st as well as 2nd financial up-gradation."

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"27.1 Benefit under ACPs on Refusal of promotion - where a promotion has been offered before the employee could be considered for grant of benefit under ACPs but refused to accept such promotion, then he cannot be said to be stagnating as he was opted to remain in the existing grade on his own volition. In such case, he cannot be granted benefit under ACPs."

5. The Applicant has been denied the benefit of upgradation under the ACP Scheme on the ground of refusing promotion and, thus, becoming ineligible by operation of clause 25 of the Respondents' letter, by which the ACP Scheme has been made applicable to the teachers under the Respondents. This has been elucidated in paragraphs 2 and 3 of the additional affidavit filed by the Respondents on the directions of this Tribunal:

"2. That the deponent submits that the applicant was offered promotion by Establishment II Branch vide office Order No.17 No. DE 2/6/DP/E-II/90/91/7091-55 dated 15.2.1991 (copy attached as ANNEXURE R-1), but applicant never joined his next promoted post of PGT, as is evident from the letter of his Head of School dated 24.8.09, (copy attached as ANNEXURE R-2). The applicant never accepted normal vacancy based promotion and as per para 25 of Notification dated 25.8.03 (copy attached as Annexure R-3) vide which ACP scheme was implemented for teachers in Directorate of Education, GNCT, Delhi, the applicant is not entitled for upgradation under the said scheme. Para no.25 of the said scheme is reproduced below:-

"REFUSAL OF PROMOTION - An Employee who has not accepted the normal "Vacancy based", Promotion shall not be entitled for upgradation under the Scheme unless he accepts the regular Promotion after completing the period of debarment on refusal of promotion. The condition is applicable for 1st as well as 2nd financial upgradation."

3. That deponent states that it is further clarified by the Establishment Branch that before initiating the process of promotion every year a Tentative Eligibility List is circulated so that eligible teachers may apply for inclusion of their names in the list. Shri H.R. Aggarwal-applicant herein had already been promoted vide order dated 15.2.1991, Annexure R-1 to this reply. After this, applicant should have represented for inclusion of his name in the subsequent eligibility list for getting promotion in case

Shri H.R. Aggarwal

he had not accepted the promotion ordered vide above mentioned order. The applicant, is therefore not entitled for the upgradation under the said scheme."

The learned counsel for the Respondents also submitted copies of eligibility lists of TGTs, issued by the third Respondent, for the years 1991-92 to 1993-94, 1998-99 and 2003-04. He would contend that the Applicant did not make any representation in spite of his name not figuring in any of the eligibility lists mentioned above and in spite of instructions that teachers, whose names were missing from the list should make representations in this regard.

6. The learned counsel for the Applicant has countered the arguments of the Respondents by stating that (a) the promotion given by order dated 15.02.1991 was purely *ad hoc* and cannot be counted as regular promotion, to which only the provision of clause 25 of the letter by which ACP Scheme has become applicable to teachers, adverted to above, would apply; and (b) the letter by which the promotion was given was never communicated to him. In this context, the Applicant states that a certificate produced by the Respondents at Annex R-2 of the OA may not be accepted as it is a doctored certificate. First, the certificate has been given after a decade of the event of promotion; second, it is given by the Principal of Government Boys Senior Secondary School of Geeta Colony, whereas the Applicant has been working in the School in Shakarpur Extension. The learned counsel would further contend that even in this certificate, the fact of service of the order of promotion has not been mentioned. It is further argued that the effect of refusing the promotion is debarment for promotion for one year. Thereafter, the Respondents never promoted him.

7. We have considered the contentions of the counsel for both parties and have also gone through the record.

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8. The Respondents have submitted eligibility lists of TGTs from 1991-92 onwards, which we have directed to be placed on record. The Applicant's name does not figure in these lists. The Office Memorandum, by which the list has been circulated has clearly stated that the teachers, whose names do not figure in the list or figures at wrong place, should file objections in this regard. The Applicant has not been able to controvert this. The Applicant could not have been oblivious to the circulation of these lists, year after year. Surely, many of his peers would have been promoted during these years. The Applicant has strangely remained apathetic to these developments. His not filing any objection to the eligibility lists, not containing his name, is strange, to say the least. Had the Applicant been alert, he would have been considered for promotion and the question of grant of upgradation under the ACP Scheme would not have arisen. There is no explanation whatsoever for the conduct of the Applicant. The Respondents are justified in coming to the conclusion that the Applicant was refusing promotion repeatedly by not filing objections against omission of his name from the eligibility list.

9. On the basis of the above, the OA is dismissed for want of merit.

No costs.

(L.K. Joshi)
Vice Chairman (A)

(V.K. Bali)
Chairman

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