



Central Administrative Tribunal
Principal Bench, New Delhi.

OA-2765/2003

New Delhi this the 8th day of February, 2005.

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K. Malhotra, Member(A)

Smt. Ganga Devi,
W/o late Sh. K.B. Bhatia,
R/o B-417, Sudershan Park,
New Delhi-110015.

.... Applicant

(through Sh. D.R. Gupta, Advocate)

Versus

1. Kendriya Vidyalaya Sangathan through its Commissioner,
Shaheed Jeet Singh Marg,
18, Institutional Area,
New Delhi.
2. Principal,
Kendriya Vidyalaya,
Shalimar Bagh,
Delhi.

.... Respondents

(through Sh. S. Rajappa, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

This O.A. is contested by the legal heirs of the deceased employee.

2. Following reliefs have been prayed for:-

"(a) To quash the impugned order dated 9.7.2001 as at A-1 after declaring it illegal and also to quash and set-aside the charge sheet dated 25.11.1978, punishment order dated 18.11.1998 and Appellate order dated 2.6.1999 after declaring them illegal also quash the office order dated 18.2.1998 and 17.2.1999 in so far it denies benefit of selection scale of Rs. 2000-3500 to the petitioner's husband w.e.f. 1.1.1986;

(b) To direct the Respondents to grant selection scale of Rs. 2000-3500 to the Petitioner's husband w.e.f. 1.1.1986 instead of 18.11.1998 with consequential benefits such as arrears of pay and retiral benefits etc.;

(c) To direct the Respondents to recalculate and pay to the petitioner, the retiral benefit of her husband on the basis of pay so fixed in the scale of Rs. 2000-3500 w.e.f. 1.1.1986 together with arrears of pay and allowances and annual increments following due from 1.1.1986 to 31.12.1995 together with interest thereon till the date of actual payment at the rate of 10% p.a.;

(d) To grant the replacement scale in terms of the recommendations of the Vth Pay Commission and Govt. of India decision thereon (Kendriya Vidyalaya Sangathan) and to fix his pay on the revised pay scale on the basis of the pay as if the applicant's husband has been granted selection grade of Rs. 2000-3500 w.e.f. 1.1.1986;

(e) Award the cost of this O.A. in favour of the applicant and against the respondents.

(f) Pass any orders or further order or orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to meet the ends of justice."

3. Learned counsel of the applicant states that deceased husband of the applicant was due for selection scale w.e.f. 1.1.1986 which was not accorded to him despite having completed 12 years service in selection grade. Accordingly grant of benefit from 18.11.1998 when a minor penalty has been imposed cannot be countenanced as selection scale is not a promotion and this is only a upgradation when there is no change in the discharge of duties and no assumption of higher duties.

4. The aforesaid OA is restricted to reliefs 8(b), (c), (d), (e) and (f) only.

Relief No.8(a) has been forgone by the applicant.

5. A minor penalty proceeding initiated against the applicant on 25.11.1978 took 20 years to conclude.

6. The respondents in their reply vehemently opposed the contentions and stated that as the minor penalty proceedings were pending, applicant could not be given selection scale from 1.1.1986.

7. On careful consideration of the rival contentions and on being pointed out as to grant of selection scale from 18.11.1998 vide their order dated 9.7.2001 and that the fact that if the minor penalty of censure has ^{not} effected the selection scale, then withholding the same from 1.1.1986 is not legally sustainable. Learned counsel has sought probe in the records which we will not countenance at this belated stage and more over when the LRs are parties. The grounds taken in reply cannot be supplemented by any other additional plea.

8. In our considered view, grant of selection scale cannot be equated with promotion and this has been apparent from the fact that though the disciplinary proceedings were held against the applicant, his case for selection scale has not

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been placed in sealed cover. Order dated 22.9.1994 issued by the KVS for grant of stagnation increments in Clause 11(2) it is provided that where upgradation involves a higher replacement scale without higher responsibilities or higher qualifications but with a higher eligibility service. It has to be ensured *only that* ["] *One* completes requisite qualifying service, there is no element of judging the suitability. Moreover, at the time of grant of selection scale no minor penalty was imposed upon the applicant and pending of disciplinary proceedings is not an impediment.

9. In the result, we do not see legal valid justification to deprive the deceased employee of the selection scale w.e.f. 1.1.1986 when he had completed the eligibility criteria.

10. Accordingly, for the reasons recorded above, O.A. is allowed, Respondents are directed to grant selection scale to the deceased government servant w.e.f. 1.1.1986 and would re-calculate the arrears and consequential benefits including the retiral benefits within three months from the date of receipt of a copy of this order and the same would be paid to the applicant as per the revised scale within this period with a simple interest of 10%. No costs.


(S.K. Malhotra)
Member(A)


(Shanker Raju)
Member(J)

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