CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3178/2003
with
O.A.No.2452/2003

New Delhi, this the 27th day of September, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

O.A.No.3178/2003:

Dr. (Mrs.) Soma Sharma
w/o Shri J.C.Sharma
TGT General
Sarvodaya Kanya Vidyalaya
Sarai Rohilla
Delhi - 110 035.
r/o B-5/253, Sector-8
Rohini
Delhi - 110 085. ... Applicant

(By Advocate: Shri K.N.R.Pillai)

Versus

Govt. of NCT of Delhi
through
Director of Education
Old Secretariat
Delhi - 110 054. .. Respondent

(By Advocate: Smt. Avnish Ahlawat)

O.A.No.2452/2003:

Balwant Singh
TGT (Drawing)
Sarvoday Boys School
RSBV Block-20
Trilokpuri
Delhi - 110 091.
r/o C-194, Pandav Nagar
Opp. Mother Diary HQ
Delhi - 110 092. ... Applicant

(By Advocate: Shri K.N.R.Pillai)

Versus

Govt. of NCT of Delhi
through
Director of Education
Old Secretariat
Delhi - 110 054. .. Respondent

(By Advocate: Smt. Avnish Ahlawat)

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O R D E R

Justice V.S. Aggarwal:-

By this common order, we propose to dispose of the Original Applications, namely, O.A.No.3178/2003 and O.A.No.2452/2003 as they involve a common question of law and facts.

2. For the sake of convenience, we are taking the basic facts from the Original Application No.3178/2003 [Dr.(Mrs.) Soma Sharma] Applicant by virtue of the present application seeks a direction to the respondents to consider her suitability for promotion against the vacancies which had arisen during the period 26.2.1996 to 4.11.1999, and if found fit, should be promoted from the date her juniors were promoted with consequential benefits.

3. Some of the relevant facts are that applicant was appointed as Trained Graduate Teacher (for short TGT) in November, 1968. At that time, she was having Masters Degree which she had obtained in 1970 and B.Ed. Later on, she obtained Ph.D Degree in Sanskrit in 1980. The recruitment rules for the post of PGT had been notified in the year 1975. It provided that language teachers who had Master's degree would be considered for promotion as PGT in their respective languages. This position had continued till 1996. In the year 1996, the Rules were amended. By virtue of the amendment that was effected, the persons who possessed MA degree ~~in English~~ would be considered for the post of PGT in

that subject. In the year 1999, the rules were re-amended and status quo ante before 1996 was restored.

4. The grievance of the applicant is that there were certain posts that were lying vacant during the period 26.2.1996 to 4.11.1999 when amended Rules of 1996 were enforced. Therefore, the applicant has a right to be considered as per those rules when the posts were vacant.

5. The application has been contested. It has been pointed that it is barred by time. The respondents plead that feeder cadre of PGT is TGT. The language Teachers like TGT (Punjabi), TGT (Hindi) and TGT (Sanskrit) are not eligible for promotion to PGT (English). The position changed when the amendment was made vide notification of 26.2.1996. Respondents contend that notification of 1996 was never implemented due to difficulties that were faced by the department. A conscious decision had been taken in this regard. During the period from 26.2.1996 to 4.11.1999, no regular promotion had been made.

6. Before proceeding further, we deem it necessary to refer to the relevant rules regarding which there is no controversy. The recruitment rules for the post of P.G. T (English) had been notified and the same provided as they stood before 1996 that for the posts of P.G.T. (Hindi, Punjabi, Sanskrit, Punjabi) etc. only T.G.T. (Language) and/ or Language Teachers of the language concerned should be

considered. In other subjects, only T.G.T Science 'A'/Science 'B'/Agriculture would be considered. On 26.2.1996, the earlier rules which had been notified under Article 309 of the Constitution were amended and the T.G.T. who obtained the Master degree became eligible to be considered for promotion as P.G.T.of the subjects in which they had obtained the said degree. The status quo ante was brought about by the notification of 4.11.1999 which reads:-

AMENDMENT

"In the Schedule annexed to the said notification, the following amendment be made:-

Column No.12 : PROMOTION :-

1. T.G.T. in the scale of Rs.1400-2600 (Pre-revised) possessing Post Graduate Degree/Diploma of 2 years duration in the subject from Delhi University with 5 years regular service in grade.

OR

TGTs/Language Teachers in the scale of Rs.1400-2600/- (pre-revised) possessing qualifications prescribed for direct recruitment and with 5 years regular service in the grade.

2. For the posts of Lecturer in Hindi, Sanskrit, Punjabi etc, only Trained Graduate Teachers/Language Teachers in Sanskrit and in Modern Indian Language concerned will be considered for promotion in their respective subjects. For the post of Lecturer in other subjects only Trained Graduate Teachers (Science 'A' Science 'B', Commerce, Agriculture and General) will be considered."

7. In this back-drop, the controversy comes within a short compass because according the applicant, he was eligible to be considered and appointed as P.G.T (English) during the period from 26.2.1996 to 4.11.1999 as per the then operating recruitment rules. That has not been done and the applicant claims a direction in this regard.

8. The position in law is not much in controversy. In the case of **A.A.Calton** v. **Director of Education and Another**, (1983) 3 SCC 33, the process of selection had commenced. Certain candidates were recommended by the selection committee but were rejected by the Deputy Director. The question that arose for consideration was as to what was the effect of the amendment, whether it would be retrospective or not and if the existing rights can be taken away by giving retrospective effect to a statutory provision when not provided expressly or by necessary implication. The Supreme Court held that though the legislature can pass laws with retrospective effect, the existing rights could not be taken away. It was held:-

> "It is true that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations. But it is equally well settled that no retrospective effect should be given to any statutory provision so as to impair or take away an existing right, unless the statute either expressly or by necessary implication directs that it should have such retrospective effect."

The case of **Y.V.Rangaiah and Others** v. **J.Sreenivasa Rao and Others**, (1983) 3 SCC 284 is a leading decision on the subject with which we are confronted with. Therein, a panel for promotion was to be prepared. Delay was there in preparing the same. An amendment in the recruitment rules was made. As a result of it, promotional chances of eligible Lower Division Clerks were affected. The Supreme Court held that the vacancies in the promotional posts occurring prior to

the amendment should be filled up in accordance with the unamended rules. The findings of the Supreme Court in this regard are:-

> "9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there is was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

It is this decision that is being relied upon by the learned counsel for the applicant in support of his argument which we have already referred to above. Same was the decision rendered by the Supreme Court in the case of **P.Mahendran and Others** v. **State of Karnataka and Others**, (1990) 1 SCC 411 and while dealing with a similar situation, the Supreme Court held:-

> "5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought

> to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is any thing therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

Similar view was taken by the Supreme Court in the case of **P.Murugesan and Others** v. **State of Tamil Nadu and Others**, (1993) 2 SCC 340. Therein, the question was about filling up the vacancies within the time prescribed. Rules prescribed eligibility criteria for promotion. The same were amended. The Supreme Court held that the vacancies arising within the prescribed period prior to commencement of the amendment should be filled in accordance with the pre-amended Rules. The decision in the case of Y.V.Rangaiah (supra) was referred to with approval. It becomes unnecessary for us to deal with further enumerable precedents on the subject, but suffice to state that in the case of **State of Rajasthan** v. **R.Dayal and Others**, (1997) 10 SCC 419, the Supreme Court once again reiterated the same view holding:-

> "But the question is whether selection would be made, in the case of appointment to the vacancies which admittedly arose after the amendment of the Rules came

> into force, according to the amended rules or in terms of Rule 9 read with Rules 23 and 24-A, as mentioned hereinbefore. This Court has considered the similar question in para 9 of the judgment above-cited. This Court has specifically laid that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose."

9. However, on behalf of the respondents, reliance was being placed on a decision of the Apex Court in the case of **Dr.K.Ramulu and Another** v. **Dr.S.Suryaprakash Rao and Others**, (1997) 3 SCC 59. Therein a conscious decision had been taken not to fill up the vacancies as per the amended rules. Keeping in view the same, the decision rendered by the Supreme Court in the case of Y.V.Rangaiah (supra) was distinguished and it was held that when such was the situation, the amended rules that came into being subsequently would come into play.

10. From the aforesaid, it is clear that it goes with the facts and circumstances of each case. If certain vacancies fall in a particular period and subsequently the rules are amended to the detriment of some of the eligible candidates, the said persons certainly can claim that they should be considered as per the unamended rules, but if a conscious decision is taken not to fill up the posts for certain reasons, in that event the abovesaid principle will not apply.

11. Learned counsel for the applicant relied upon the decision of the Delhi High Court in the case of **Director of Education and Anr. v. Sh. Ratan Lal**, Civil Writ Petition No.4338/2001, decided on 1.6.2001. The Delhi High Court held that there is no conscious decision that had been taken not to fill up any pending vacancy unless the process which has already started on an administrative ground is completed and, therefore, the Writ Petition had been dismissed. Therein reliance was further placed on the decision of this Tribunal (both of us members to it) in OA No.450/2003, decided on 11.8.2003 entitled **Daya Nand v. Govt. of NCT of Delhi**. Therein also, not only the decision of the Delhi High Court was followed but we had specifically recorded that our attention has not been drawn to any conscious decision having been taken on the file of the concerned Ministry/Department to support that they did not intend to implement the rule.

12. At this stage, we deem it necessary to mention that it is unfortunate that at that relevant time when the earlier decisions referred to above which supports the applicant's claim were rendered, our attention had not been drawn to any such conscious decision on the record that had been taken not to implement the amended rules. It is this fact which prompted this Tribunal as well as the Delhi High Court to record a finding to the contrary. But the matter of fact remains that if a conscious decision had been taken, in that event, indeed the ratio decidendi of these decisions has no application.

13. In the present case before us, the respondents have produced copies of the decisions that have been taken and approved by the concerned Minister that keeping in view the difficulties, the amended rules may be kept in abeyance till the matter is re-examined and the rules re-amended. We hope and trust that necessary action on the administrative side shall be taken because as already referred to above, on earlier occasions this fact had been suppressed from this Tribunal and even from the Delhi High Court. In this view of the matter, the earlier decision would certainly be taken to be per incurrium. In the present case, we have already referred to above that a conscious decision had been taken photo copies of which were made available and even the original official record had been made available for our perusal. It is obvious that it has been decided that till the changes take place, the amended rules shall be kept in abeyanle. A feeble attempt has been made that these decisions only can be taken with the leave of the Minister and had not to be put to the Lt. Governor who had amended the rules. So far as this particular contention is concerned, the Lt. Governor indeed has exercised his powers to amend the rules in exercise of the powers conferred under Article 309 of the Constitution. Implementation is always by the executive. Therefore, the executive took the decision to keep the rules in abeyance. Subsequently the rules were re-amended with the approval of the Lt. Governor. This amounts to ratification of the earlier act. Therefore, this particular contention on behalf

of the applicant mu˜st also fail in the peculiar facts. Therefore, it must follow that the applicant can not take advantage of the above said decisions.

14. The applicants relied upon the decision of the Supreme Court in the case **of S.N.Kharkhanis & Ors.** v. **Union of India & Ors.**, [1974] 3 SCR 589. Perusal of the decision clearly shows that it was totally different from the facts of the present case. There was a Presidential resolution dated 12.8.1959 made. It was under proviso to Article 309 of the Constitution which combined the Central Excise Service Class-I and the Indian Customs Service Class-I. The Government had decided otherwise and fixed another date. The Supreme Court held that Government had no authority to override the Presidential resolution. That is not the position before us and, therefore, the applicant cannot take advantage of this decision.

15. There is another way of looking at the matter. On behalf of the respondents, it is vehemently contended that the application is barred by time. The applicant had not submitted any application along with the Original Application but subsequently had filed a petition seeking condonation of the delay.

16. Respondents contend that repeated representations do not extend the period of limitation. The representation otherwise also has been belatedly filed and will not extend the period of limitation. In the application filed seeking condonation of delay, the applicant's plea is that she had submitted the representation on 23.04.2001. As

soon as the legal position was settled by the Delhi High Court, the representation was submitted through the Principal of the School. The applicant waited for six months and came to know that it has only reached the Directorate of Education on 28.1.2002. She still did not file the Original Application because she thought it necessary to wait for another six months.

17. The application has been opposed.

18. During the course of the submissions, applicants' learned counsel had argued that each year applications were invited and therefore, every year gave a fresh cause of action to them. So far as this particular contention is concerned, it has to be stated to be rejected because this is not the plea taken in the application for condonation of delay.

19. Every person is supposed to be alive to the cause of action. As already referred to above, the rules were re-amended and status-quo ante was restored in the year 1989. The applicant still delayed the matter and filed the application only on 12.12.2003. The period of limitation had long expired. To state that applicant waited for others and after the decision in the case of others, she had chosen to file the application, would not be correct. The Supreme Court in the case of **Bhoop Singh** v. **Union of India & Others**, (1992) 3 SCC 136 has dealt with this question and held:

> "7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of

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limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fact to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason to not classify him with the other dismissed constables who approached the Court earlier and got reinstatement. It was clear to the petitioner latest in 1978 when the second batch of petitioners were filed that the petitioner also will have to file a petition for getting reinstatement. Even then he chose to wait till 1989, Dharampal case [(1990) 4 SCC 13] also being decided in 1987. The argument of discrimination is, therefore, not available to the petitioner."

20. Similarly in the case of **State of Karnataka and Others** v. **S.M.Kotrayya and Others**, 1996 SCC (L&S) 1488, the Supreme Court again reiterated the same view that mere fact that the applicants filed belated applications immediately after coming to know that similar claims/reliefs have been granted by the Tribunal was not a proper explanation to the condonation of delay.

21. The aforesaid decisions bind this Tribunal. Therefore, it must be held that to contend that because the decision in the matter of others had

been given and, therefore, the applicant had also chosen to file the application, is not a ground to condone the delay.

22. The only other plea taken is that the applicant had represented on 23.4.2001 and her representation reached the Directorate of Education on 28.1.2002. Even this plea, on his face of it, has no ground to condone the delay. In the provisions of Administrative Tribunals Act, 1987, she could wait for six months and thereafter, should have filed an application before this Tribunal. Herein, she waited for more than necessary limitation period prescribed at the time of the application. The application from either angle must fail and we are of the considered opinion that there is no ground to condone the delay.

23. For these reasons, both the Original Applications being without merit must fail and are dismissed.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/