

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 126/2003

NEW DELHI THIS.. 29th DAY OF June, 2004

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

Sh K C Gupta S/o Sh Shrichand,
R/o 6-B, Anubhav Apartments,
Sector -13, Rohini, New Delhi.

.....Applicant

(By Shri Sudhir Sharma, Advocate)

VERSUS

1. Govt. of NCT of Delhi,
through its Chief Secretary,
5 Alipur Road, Delhi
2. The Director,
Directorate of Education,
NCT of Delhi, Delhi

.....Respondents

(By Shri George Paracken, Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant joined service with the MCD as Assistant Teacher on 19.8.1959 and was promoted as Drawing Teacher on 17.7.1965. Selection Grade was granted to Assistant Teachers who had not been promoted to higher grades. This led to an anomaly where Assistant Teachers who had been promoted to a higher post before the introduction of non functional Selection Grade, drew less pay than their juniors after their elevation to Selection Grade.

2. Such anomalies occurred in other Group C & D cadres where selection grades had been introduced. In order to remove this anomaly the DoPT issued OM No.

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4(3)/82/Estt(P1) dated 15.2.83 which pertain to anomalies created as a result ~~of~~ introduction of selection grade in Group C & D Cadres.

3. In order to remove this anomaly it was decided by DoPT vide their OM dated 15.2.83 that in cases where the pay of the senior employee in the higher grade is lower than his junior the pay of the senior may be stepped up equal to the pay of a junior persons subject to certain conditions. The stepping up was to take effect from the date of the promotion of the junior employee to the higher grade but the actual benefit would be available from the date of issue of the order or date when the anomaly arose, whichever was earlier.

4. When this benefit was not extended to the effected teachers a CWP No. 2452/1985 titled V K Malhotra and Ors. Vs. Delhi Administration was filed in the High Court. This CWP was transferred to this Tribunal and registered as TA 1236/1985. The Tribunal decided the TA through ~~that~~ directions that the applicants should be given benefits of stepping up of pay w.e.f. ~~5.1.71~~ ^{*05.9.1971}, as per the DoPT Memo. referred to earlier. And the arrears of pay and allowances admissible after stepping up be paid within three months.

5. In pursuance of the directions of the Tribunal the respondents fixed the pay of effected persons at Rs.340/- per month w.e.f. 5.9.1971 in the Selection Grade scale of ~~Rs. 340-2-100~~ ^{*Rs.340-20-400}.

** corrected as per order dt: 15²/₆₅ in MA 2093/04 in CA 126/2003. M. A. Andhr 07/03/2005*

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6. The grievance of the applicant is that the fixation of pay was incorrectly made as Rs. 340/- whereas it should have been Rs. 400/- . Accordingly he is entitled to arrears of pay, pension, commutation of pension , leave encashment and gratuity consequent upon refixation. The second grievance is that there has been inordinate delay in payment of retiral benefits and also non payment of the remuneration for the extended period of service from 1.1.99 to 31.3.99.

7. The applicant had earlier filed an OA No. 1297/2000 for payment of these dues which was disposed of by the Tribunal by order dated 14.1.2002 with the following directions :

- i) the applicant may submit a self contained representation along with all supporting documents he relies upon to show the outstanding claims, subject to what has been stated in paragraph 3 above.
- ii) on receipt of such a representation, the respondents shall reconsider the issues on each of the claims and pass a detail and speaking order , supported by the relevant documents/citations of rules they rely upon. The applicant shall also be given a personal hearing if he choose to do. The respondents shall also consider the question of the claim for interest in accordance with the rules. They shall pass the speaking order within six weeks from the date of receipt of the representation , with intimation to the applicant.
- iii) in case any grievance survives, it is open to the applicant to agitate the issues in accordance with law."

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8. The applicant has filed the present OA on the ground that the respondents have failed to make all the payments due to applicant especially the arrears of pay after re-fixation as per the directions of the Tribunal in OA 1236/85 and his entitlement for interest has not been accepted.

9. The respondents have stated that the applicant has been paid what was due and nothing remains. This was not a position accepted by the applicant. The factual position could only be ascertained with ~~d~~ proper financial statements. Therefore, the respondents were directed to file statements ~~of~~ of payments made against the claim of applicant in his representation, along with a copy ~~of~~ ^{to} the applicant for resolving the issue.

10. The statement of payment made has been placed on record by the respondents and it has been noted on the statement that due and drawn statement has been prepared by the applicant himself.

11. In pursuance of Tribunal's directives of 14.1.2002 the applicant has put forward ~~his~~ ^{his} claim in a representation. A comparison of the payment made against the claim of the applicant shows that no difference between the applicant and respondents remain except for pay fixing and arrears arising there from. The following are the payments made and they are ~~meeting~~ ^{matching} the claim of the applicant in his representation dated 23.5.02.

* corrected as per order dated: is $\frac{2}{05}$
in MA 2093/04 in OA 126/2003.

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a) DCRG : Rs. 1,91,325/-
 b) commutation of pension : Rs. 2,23,668/-
 c) leave encashment : Rs. 79,198/-
 d) UTGEIS : Rs. 8,166/-
 e) pay arrears fixation 5/95 to 12/96 : Rs. 4,566/-*
 f) payment for extended period of service from 1.1.99 to 31.3.1999 : Rs. 21,135/-

12. As per the claim made by the applicant for the extended period of service w.e.f. 1.1.99 to 31.3.1999 the amount comes to Rs. 21,135/- (~~including~~ ^{*}excluding interest) as the applicant was paid pay arrears only on 18.4.2002.

13. The only remains difference between the parties is for for arrears arising from pay fixation for the period 5.9.1971-31.12.98. According to the applicant this is Rs.75,000/-.

14. The respondents states that after verifying the position from the office records the pay of the applicant was refixed vide order 2074/N dated 1.06.99 and the copy was forwarded to A.O. for verification and approval. However, on verification it was seen that applicant was not entitled for any arrears in pay and allowances as he was already ~~been~~ drawing Rs. 350/- in scale of Rs. 220-430/- on 5.9.71, the date when he was fixed in the Selection grade scale to Rs. 340/- . He was allowed to continue with Rs. 350/- in terms of FR 27(13)) in this higher pay and as such no arrears were due.

dr <sup>* Corrected as per order dated :
is 2/- in MA 2093/04 in 00126/03.</sup>

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15. The applicant claims that pay fixation at Rs.340/- was erroneous and if he had been correctly fixed at Rs. 400/- he would be due for arrears as per his claim.

16. We have heard counsel for both the parties and find that there is only one issue left for adjudication namely entitlement of the applicant to arrears after pay fixation on 5.9.1971, in the selection grade.

17. On 5.9.71 the pay scale for posts relevant in the present OA were as under:-

i. Assistant Teacher (Ordinary scale) :
Rs. 165-10-215-15-275-EB-15-350.

ii) Assistant Teacher (Selection scale) :
Rs. 340-20-400.

iii Drawing teacher Gr. II :
220-15-310-20-430.

18. On 5.9.71 the applicant was working on the promotion post of Drawing Teacher Grade-II in the pay scale of Rs. 220-430 and drawing a salary of 350/-. In the Selection Grade he was placed at scale point Rs. 340/- (Rs. 340-400/-). Hence he was drawing higher remuneration.

19. The manner of stepping up of the pay equal to the pay of his junior person is reproduced in the TA 1236/85 and is as under :

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"3. In order to remove the above anomalies, it has been decided that in such cases the pay of senior employee in the higher grade may be stepped up to make it equal to the pay of the junior person, subject to the fulfilment of following conditions:

- (i) the scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are entitled to draw pay should be identical.
- ii) the senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade.
- iii) The junior person should not have been drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade.

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20. From the study of the above directions it is clear that ^{for} stepping up to the selection grade from the grade of Assistant teacher, the applicant would come in that category of persons who have been promoted from Asstt. Teacher (ordinary scale) of Rs. 165-350/- to higher scales. Whereas some of the juniors who were not promoted and continued as Asstt. Teachers become eligible for non functional selection grade scale of Rs. 340-400. The pay of the applicant in the Asstt. Teacher (ordinary scale) would than fall behind that of his juniors placed in the selection grade. As such, his pay would have to be stepped up to the level of his junior in the selection grade. This has been done by fixing him at Rs. 340/- in the selection grade of Rs. 340-400/-. The applicant has not claimed that any ~~more one~~ ¹

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junior to him has been placed at a higher scale point. There appears to be no basis for his claim for fixation at Rs.400/- in the selection grade on 5.9.1971. From Annexure A-3 it is clear that the pay of the applicant has been revised in accordance with the norms/instructions/rules after placing him at Rs.340/-.

21. However, vide MA No. 2527/2003 due and drawn statement has been placed on record for the period September 71 to January 98. The statement shows that in September 71 the applicant was drawing Rs.250/- whereas in Annexure A-3 it has been stated that he was working as Drawing Teacher Grade-II in the pay scale of Rs.220-430/- and was drawing Rs. 350/- in the scale.

22. To resolve the anomaly between the fixation of pay shown in Annexure A-3 and the Due and Drawn statement (Annexure A-24) the respondents were asked, twice, to clear this ambiguity through additional hearings, however, the respondents were unable to explain the difference between the pay as fixed and shown in order dated 18.3.98 (A-2) and Due & Drawn Statement placed on record by the applicant as Annexure A-24.

23. In order to resolve the difference between claim of the applicant and the respondents we dispose of this OA with the direction that the applicant, if he so desires, may make a detailed, reasoned and self contained representations to the respondents detailing his claim for arrears for the period 5.9.1971 to 5.9.1997.

* Corrected as per order dated: 15/05/2003
in OA 2072/03 in OA 126/03. 10
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31.12.1998. Respondents will examine the representation and the due and drawn statement placed on record by the applicant as Annexure A-24 and pass a reasoned and speaking order. within four month of receipt of the representation of the applicant and pay arrears, if any, to the applicant within a period of 2 months from the date of issue of its order. Even after this if any grievance ~~not~~ survives the applicant is at liberty to agitate the same through a fresh OA. With these directions the OA stands disposed of. No order as to costs.

(S.A. Singh)
Member(A)
(V.S. Aggarwal)
Chairman

Patwal/