

passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short, 'the tribunal') in O.A. 647/2001.

2. The facts which are essential to be unfolded are that the respondent-employee Sh.Gyan Chand approached the tribunal under Section 19 of the Administrative Tribunal Act, 1985, assailing the order dated 18th July, 2000 whereby the proposal for upgradation of the post of Workshop Superintendent was rejected. It was contended before the tribunal that the upgradation of the post was imperative to be done on the basis of various recommendations and also keeping in view the job profile of the Workshop Superintendent. Various other assertions were made claiming equivalent pay-scale to the post of Head of the Department.

3. The stand put forth by the respondent-employee was resisted by the present appellant and its functionaries contending, inter alia, that there is a gulf of difference between the qualifications prescribed for the post of Workshop Superintendent and the Head of the Department. The applicant-employee is not eligible for the post of Head of the Department as he does not fulfill the qualifications recommended for the said post and, therefore, the claim for the pay-scale of Rs.3700-5700 is not allowable. It was also

urged that the duties and responsibilities for the post of Workshop Superintendent and Head of the Department are different. Reliance was placed on the decision of the Principal Bench of the tribunal in O.A. No.1311/1988 wherein the claim was dismissed on the ground that the same falls within the domain of a policy decision.

4. The tribunal referred to the recommendations of the AICTE dated 20.9.1989 regarding revision of pay-scales of teachers of technical institutions (Polytechnics). The tribunal observed that the counsel for the respondent was not able to state whether the recommendations had been accepted by the Government. It further proceeded to hold that the order dated 5th August, 1998 in O.A. No.1311/1988 was not a binding precedent, the same having been dismissed in limine. It relied on the decision in O.A.No.412/1994 by the Calcutta Bench of the tribunal decided on 23rd March, 1998 holding that the same is applicable to the case at hand.

5. Following the said decision, the tribunal directed to extend the benefit of pay-scale of Rs.3700-5700 (revised Rs.12000-18000) to the applicant from the same date as given to the rank of Head of Department along with arrears provided he fulfills the essential qualifications prescribed for the post

of Head of the Department (Lecturer and Selection grade) as prescribed by the letter-circular dated September 20, 1989.

7. We have heard Mrs.Avnish Ahlawat, learned counsel for the petitioner. There has been no appearance on behalf of the respondents.

8. It is urged by Mrs.Avnish Ahlawat, learned counsel for the petitioner, that the AICTE is silent about the salary structure of Workshop Superintendent, qualifications for the post of Head of the Department which is higher than the post of Workshop Superintendent and the recommendations of Madan Committee and the AICTE are not mandatory. It is her further submission that the Government/Union territories are to decide the pay-scale taking into consideration the local conditions, the post of senior lecturer is not equivalent to the Head of the Department inasmuch as the post of senior lecturer is in the pay-scale of Rs.10000-15200 whereas, the post of Head of the Department is in the pay-scale of Rs.12000-18000, the Diploma holder working in the post of Workshop Superintendent cannot be placed in the pay-scale of Head of the Department and the Foreman instructor is not a feeder post of Work Superintendent and that Jamia Millia Polytechnics had the post of Workshop Superintendent already in the pay-

scale of Rs.3000-4500 (prior to revised scale of pay) and qualifications prescribed were also higher. Learned counsel for the petitioner has produced a comparative chart of pay-scale from the paper book and learned counsel has also invited our attention to the recruitment rules that post of Foreman-Instructor is not a feeder post and in any case the petitioner does not possess the qualifications to hold the post of Head of the Department as the pre-requisite to hold the said post is a Master's Degree in Engineering and he does not hold the same.

9. At this juncture, we may refer to Annexure 'A' which deals with the recommendations of All India Council of Technical Education regarding the revision of pay-scales of technicians and technical institutions.

10. The requisite qualification for Head of the Department is as follows:

“REQUIRED QUALIFICATIONS:

Head of Department:

Essential : 1) First class Master's degree in engineering/technology/technician education or Ph.D Degree in appropriate branch for teaching posts in humanities and sciences

ii) 5 yrs experience in teaching industry and research of appropriate levels

Note: Candidates from industry/ profession with recognized professional work equivalent to master's Degree or Ph.D degree as the case may be will also be eligible.

Desirable: i) Ph.D degree in engineering /technology/ technician education

Or

Post –Doctoral work in the case of teaching posts in humanities and sciences.

Work Superintendent

Essential: I) degree in Mech. Engg. of a recognized University or equivalent.

i) About 1 year experience in large mechanical Engineering workshop.

OR

i) Diploma in mechanical Engg. of a recognized institute or equivalent.

ii) About 5 years experience in a large Mechanical Engineering Workshop.”

11. On a perusal of the facet of qualifications, it is clear that the aspirant must hold a first class Master's Degree in Engineering. It is also worth noting that the Principal Bench of the tribunal in O.A. No.1311/1998 in the case of *N.K.Sarsoonnia v. Govt. of National Capital Territory of Delhi*, dealt with the prayer of the applicant therein for issue of directions to the respondent to upgrade the post of Workshop Superintendent as per

recommendations of the Madan Committee as well as that of the AICTE with respect to the post of Workshop Superintendent and to confer the benefit of pay-scale of Rs.3700-5700 w.e.f. 1.1.1996. Be it noted, the said pay-scale was revised later on. The tribunal in that context expressed the view as follows:

“ We have heard the counsel for the applicant. The case of the applicant is that the respondents had set up a Committee in 1974 headed by Prof.P.J.Madan Pro-vice Chancellor in the University of Baroda which had given its recommendations in 1978. One of these recommendations was that Workshops in the Engineering Colleges and Polytechnics should be under the overall charge of a Workshop of Superintendent in the rank of a Senior Lecturer. While the other recommendations including the upgradation of Demonstrators, instructors and Technical Assistant were accepted, the respondents did not implement the recommendation in regard to Workshop Superintendents. Subsequently, in 1989 the All India Council for Technical Education also made certain recommendations about the Staff Cadre structure of Polytechnics and suggested categorization of the Workshop Superintendents with Head of the Department/ Lecturer selection Grade. This recommendation was also ignored by the respondents. The applicant says that he has given a number of representations for the implementation of the recommendation of Madan Committee and the All India Council of Technical Education in respect of

the post of Workshop superintendent but to no avail.

3. We have carefully considered the aforesaid pleadings and the submissions made by the learned counsel. The Directions sought for by the applicant fall in the domain of a policy decision. The State cannot be compelled to accept all or any of the recommendations of an Expert Body constituted by it. No directions can also be given to upgrade a post which could result in a monetary implication. Since the relief sought for by the applicant cannot be granted we find no reason to proceed further with this O.A. which is accordingly dismissed at the admission stage itself.”

12. The aforesaid decision rendered by the Principal Bench has been distinguished from the impugned order on the ground that it was dismissed in limine and, hence, is not a binding precedent. To express such a view, the tribunal has not ascribed any reason. In our considered opinion, the view expressed by the tribunal in this regard is incorrect. We have said so as the tribunal on earlier occasion while dismissing the matter in limine had expressed its view by ascribing reasons. Once there is an expression of view which contains a point of law, it is a binding precedent. The tribunal is not correct in holding that it is not so solely on the ground that it has been dismissed in limine. As noticed earlier, the tribunal has followed the

directions issued in the case of *Mohammed Mansoor v. Union of India*, OA No.412/94 decided by the Calcutta Bench of the tribunal. As is manifest, the tribunal has not really addressed to the statutory rules to show how the right has been fructified. Learned counsel for the petitioner would submit that there are statutory rules that deal with difference in the educational qualification in respect of the posts in question and, hence, treating the posts equivalent is not tenable. It is also her submission that the recommendations given by various committees were not accepted and the said aspect was dealt with in the earlier decision but the same have not been distinguished by the tribunal.

13. Regard being had to the submissions put forth and taking note of the fact that there was an earlier decision, we are of the considered opinion that it was obligatory on the part of the tribunal to address to the distinguishing features, not to treat the earlier decision as a binding precedent and follow the decision in *Mohammed Mansoor* (supra). That apart, the lis between the two cases has really not been stated by the tribunal. A bald opinion has been expressed that the earlier decision is not a binding precedent which is not correct in law and thereafter abruptly the decision rendered in *Mohammed Mansoor* (supra) has been followed. Keeping in view the

factual matrix, the rule position, the issue whether the recommendations would have been treated to be binding or at any point of time had been accepted by the Government or Union Territory, we may dispose to think that the order passed by the tribunal deserves to be set aside and the matter has to be remitted to the tribunal for fresh adjudication keeping in view all the aspects and also dealing with how the decision in *N.K.Sarsoon* (supra) is distinguishable on the facts of the case.

14. In the result, the writ petition is allowed. The order passed by the tribunal is set aside and the matter is remitted to the tribunal for a fresh hearing after issuing notice to the parties. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J

APRIL 29, 2011
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