

12

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2148/2002
MA No.1748/2002

New Delhi this the 13th day of February, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Chander Dutt,
S/o late Sh. Hoshiar Singh
R/o Qr. 31/1, Budh Vihar
Phase-I, Delhi-41.
2. I.D. Sharma,
R/o 95/1 Pocket D 12,
Sec 7 Rohini,
Delhi-85.
3. Rajpal,
S/o Sh. Balbir Singh,
R/o 188 Paal Bhawan,
Mongolpur Kalan,
Delhi-83.
4. Jai Bhagwan Bhardwaj,
S/o Sh. Neki Ram,
R/o Vill Mubarakpur PO Ranikhera,
Delhi.

-Applicants

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Govt. of NCT of Delhi,
through Lt. Governor,
Raj Niwas,
Delhi-110054.
2. Secretary of Education,
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariat,
Delhi.
3. Director of Education,
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariat,
Delhi.

-Respondents

(By Advocate Mrs. Avnish Ahlawat with Sh. Mohit Madan,
Advocate)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicants impugn respondents' order dated 8.8.2002, whereby Directorate of Education in furtherance of the policy decision notified the posts of Vice

(2)

Principals to be created/transferred in five schools, including four middle one secondary school by transferring the post from those senior secondary schools. Applicants have sought quashment of these orders and to punish the officers who are playing mischief with the career of applicants.

2. Applicants, four in number, have joined as TGTs/Language Teachers. Post of Head Master which is existing for the last more than 30 years have neither been filled through direct recruitment or by promotion but Head Masters, Middle Schools who have come from Middle Schools of MCD have been continuing as Head Masters in Middle Schools or those who are surplus from Food Laboratories functioning under MCD were absorbed in the Directorate of Education. TGTs form a separate cadre and the TGTs of the Middle Schools form a special cadre where TGTs of Delhi Admn. form an administrative cadre. Promotions are made to the posts of PGTs taking Teachers from both the cadres as per the respective strength. Being a diminishing cadre Head Masters became enbloc junior to PGTs in seniority or these posts have been converted into Vice-Principals. Applicants have been posted as incharge pending appointment/posting of Vice Principals and are drawing salary against the posts of Head Masters for the last five to six years. Being aggrieved by not being accorded regular promotion from the date of availability of vacancies as Head Masters applicants filed OA-2927/97. By an order dated 2.9.98 though upholding the policy decision of respondents not to fill up the existing vacancies of

Head Masters and abolition of 296 posts of Head Masters and creation of 169 posts of Vice Principals following directions have been issued:

"14. We hereby therefore direct that --

(i) to the extent of posts of Head Masters available (20 or more), a DPC should be convened within a period of one month from the date of notification referred to above under the existing recruitment rules and if the applicants are senior enough to be eligible for consideration to the post of Head Master. They should be so considered and posted if found fit in accordance with law on a regular basis and

(ii) till the next recruitment rules are notified the officiating status of the applicants in the post of Head Master shall not be disturbed except in accordance with law.

(iii) Subject to the above two directions we do not find any merit in the rest of the contentions. The O.A. is disposed of as above. No costs."

3. Consequent upon directions by an order dated 10.6.96 creation of posts of Vice Principal has been approved by the Government and has received concurrence of the Finance department on 15.12.98. Accordingly on 6.8.2002 a notification was published in Delhi gazette regarding creation of 169 posts of Vice Principals in lieu of abolition of 206 posts of Head Master with further stipulation that promotion of TGTs/LTs henceforth shall be made to the posts of PGTs/Lecturers as per the existing recruitment rules already notified for the post.

4. In furtherance of the aforesaid notification and in compliance of the directions of the Tribunal in OA-2197/97 by way of internal correspondence a note has been written by the Director of Education, whereby it has been decided to notify the posts of Vice Principal in all

the five schools, including four middle one secondary school where applicants have been working by transferring the posts from senior secondary schools having low enrolment and where both post of Vice Principal and Principal exist.

5. Applicants against this internal note, which has not been addressed to them, approached this court and by an order dated 13.8.2002 as an interim measure aforesaid order has been held in abeyance and is directed not to be enforced.

6. Shri Arun Bhardwaj, learned counsel appearing for applicants vehemently contended that whereas directions issued on 2.9.98 in OA-2927/97 clearly provide maintenance of officiating status of applicant as Head Masters till the new recruitment rules are notified and to be disturbed only in accordance with law. Moreover the directions to convene a DPC and to consider cases of applicants for the posts of Head Master on regular basis has not been complied with and with a view to circumvent the directions the impugned orders have been passed without even issuing a show cause notice to applicants, which on the face of it, runs against the directions and is contemptuous.

7. Shri Bhardwaj while referring to the Cabinet Note contended that admittedly there are 470 posts of Head Masters out of which 303 posts are in secondary and senior secondary against which only 20 Head Masters are working in the Department. A proposal has been made for creation of 169 posts of Vice Principal and as a result on the basis of matching saving 206 posts of Head Master are abolished. In

so far as remaining 266 posts of Head Master are concerned and the fact that old recruitment rules are in vague and new recruitment rules are not notified and TGT is one of the feeder cadre the case of applicants should have been considered for regularisation as Head Master.

8. While referring to the notification issued in gazette it is contended that last portion with that deals with promotion of TGT to PGT is concerned, the same has not been referred to the Cabinet and was approved. No recruitment rules are yet framed.

9. He further contended that as 266 vacancies in the posts of Head Master are still existing and in spite of the directions of the Court no DPC has been held which as per the instructions of DOPT was to be held every year certainly smacks of arbitrariness on the part of respondents to deprive applicants their rightful regularisation as Head Masters. By referring to the settled principles of law that if the vacancies had occurred prior to the amended recruitment rules promotion would be held as per the unamended rules.

10. He further stated that as per the list of the schools where proposal to create 169 posts of Vice Principal has been made the list of schools includes the schools where applicants are working. He further stated that once the respondents have taken a conscious decision to retain the post of Head Master in the schools where applicants are working and not decided to create posts of Vice Principals in these schools applicants are not covered by the Cabinet proposal and its further consequent

approval, as such a decision already taken by the respondents cannot be changed to the detriment of applicants. It is stated that respondents have not convened any DPC which is violative of fundamental rights of applicants for being considered for the post of Head Master on regular basis.

11. It is stated that applicants have already put in about six years' service as Head Masters/Incharge reverting them is unfair and violative of principles of natural justice in absence of any opportunity to show cause.

12. It is further stated that recruitment rules for Head Masters are yet to be amended. It is stated that impugned order dated 8.8.2000 has been passed without application of mind and to scuttle the judgment of the Tribunal the exercise is to be completed within two weeks. In so far as para 13 of the earlier decision is concerned, in fact the competence of the Government to create and abolish post was upheld but in the operative part direction to hold the DPC has not been challenged and has attained finality and its non-compliance clearly shows callous attitude of respondents towards applicants. By placing Vice Principals in the schools rights of applicants would be taken away. It is stated that once the exercise of abolition of 206 posts has been approved and notified it has attained finality. To this a proposal has been made by the establishment branch to implement court's orders dated 2.9.98. It is also stated that at two schools post of Head Master has been created. This runs counter to the stand of respondents to abolish the diminishing cadre. By referring

to the guidelines for post fixation issued on 6.7.98 it is stated that in each middle school one Head Master has been provided. By further referring to OM dated 30.12.91 and the plea of diminishing cadre cannot be countenanced, which is an eligibility list of TGTs meant for promotion to the post of Head Masters where names of applicants are interpreted.

13. On the other hand, Smt. Avnish Ahlawat, learned counsel appearing for respondents alongwith Sh. Mohit Madan rebutted the contentions of applicants and stated that applicants are working as TGTs/Language Teacher with Govt. of NCT on substantive basis. According to her separate list is maintained for TGT/Language Teacher respectively in Directorate of Education. Their next promotional avenue is PGT in their respective subject and as per the recruitment rules 75% posts are to be filled up by promotion and 25% by direct recruitment. Applicants No.1 and 4 were appointed as TGT/General and 2 and 3 as TGTs/Langauge Teachers. As they are in the respective seniority list they are far below whereas another person Ram who was also applicant in the earlier OA has already been promoted as PGT. Giving brief history it is contended that prior to 1971 secondary education was managed by Delhi Administration as well as MCD which was running middle and high school apart from primary schools. On a decision in 1971 by the Government to transfer middle and high schools to Directorate of Education from MCD 470 posts of Head Masters alongwith other Teachers were transferred to Director of Education. With the lapse of time and on reduction of posts on account of non-recruitment of fresh Head Masters and due to vanishing cadre middle school

continued to be upgraded to secondary and senior secondary schools where the posts of Vice Principal exist there was no need to retain Head Master in the School but these posts were not abolished. In the interregnum new middle schools had opened where the posts of Head Masters were created. Accordingly the position emerged was that in all 470 posts of Head Masters, 303 posts were in secondary and senior secondary schools and remaining 116 in the middle schools, against which there were only 20 Head Masters in the department against the remaining posts of Lecturers/PGTs were posted to work as Head Master and thus the post of Head Master had lapsed. This has created some adverse effects on the department as senior secondary schools are deprived of the services of PGTs who are posted as Head Masters in the diverted capacity on account of lack of accountability in the middle schools as those who are not attached to any senior or secondary school and due to financial constraints matter was submitted to the Cabinet to abolish 206 posts of Head Master in each middle school be put under the charge of a Vice Principal within the finance available. A proposal of for creation of 169 posts of Vice Principal was initiated. However, 20 posts of Head Masters have been retained to accommodate remaining Head Masters who had drafted from MCD and that each Head Master retiring the post would be converted into Vice Principal. This Cabinet Note was approved by the Government as well as Finance Department and was notified in the gazette.

14. By referring to the earlier decision of the Tribunal (supra) although decision of the Government not to fill up the vacancies has been upheld and the court has declined to interfere in the policy decision, but in so far

(9)

as 20 posts of Head Masters are concerned, directions have been issued to consider the case of applicants if they are senior and to maintain their officiating status till the recruitment rules are modified. Applicants have been declared as incharge till the posting of Vice Principal otherwise they have been posted as TGTs and Language Teachers and drawing salary and benefits like senior scale against substantive post of TGT. They have been transferred from one school to another by the Education Officer but this would not construed as an ad hoc promotion which E.O. is not empowered to order. A DPC was to be held but could not be held due to want of particulars. It is contended that applicants have challenged the un-official Note of the Director not addressed to applicants which does not give them any right or cause of action. They have no right to continue in the schools against the vacant posts of Head Master. They cannot be promoted as Head Masters nor appointed as officiating Head Master as their channel of promotion is PGT, rather Head Master which is a diminishing cadre and as per the seniority as well they are not senior enough to be considered even assuming that the old rules are in vogue. As the policy decision of the Government has already been declared inter vires and does not suffer from any malafides or violative of Articles 14 and 16 of the Constitution of India and the fact that respondents have never acted upon recruitment rules of 30.5.72, applicants have no legal valid claim enforceable in law.

15. It is stated that un-official note dated 8.8.2002 and any interference in that would prevent the department to do their administrative jobs. The schools in

which applicants are working are without any senior officers to supervise the work of Teachers and students, as such this has necessitated abolition of Head Master and further steps to appoint Vice Principals. In fact Smt. Ahlawat further stated that proper remedy before the applicants was to file a contempt in case they are aggrieved and are of the view that respondents have wilfully disobeyed the directions.

16. We have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by this court in OA-2979/97:

"11. In the above two cases, if the Supreme Court upholds the Government's right not to fill up the vacancies even after the panel is prepared. There is no vested of the applicants in this case to demand filling up of the existing vacancies. The decision not to fill up vacancies has been taken bonafide for adequate reasons. The matter under consideration was for abolition of 296 posts of Head Masters and creation of 169 posts of Vice Principal instead. The Directorate of Education had submitted cabinet note in this regard. The proposal is at para 6 the note which is extracted hereunder :-

"(1) For creation of 169 posts Vice-Principal in the pay scale Rs.2000-3200 (pre-revised) in lieu of 2 posts of head-master in the pay scale Rs.1640-2900 (pre-revised) which are to abolished. The abolition of 206 posts head-masters is proposed for the purpose generating finance for the creation of posts of vice-principal. The expenditure on creation of 169 posts of Vice-Principal will be Rs.34777060.00 (Rupees three crore seven lakh seventy seven thousand and sixty only).

(2) For abolition of 206 posts of head-master which will curtail the Government expenditure by Rs.3,74,33,500.00 (Rupees three crore seventy four lakh thirty three thousand and five hundred only) by creation of 169 posts of Vice Principal and abolition of 206 posts of head-master. There will be a net annual saving

of Rs.26,56,440.00 (Rupees twenty six lakh fifty six thousand four hundred and forty only) in Government expenditure.

(3) For retention of 20 posts of head-master to accommodate the 20 remaining head-masters.

(4) For upgrading the post of the head of a middle school from that of existing head master to that of vice-principal.

(5) For waiving the condition for administrative reforms study because these posts are urgently required for better supervision and administration of middle schools and the study may take a long time to complete.

12. Any direction on our part to hold the DPC and appoint and regularise the Head-masters in these posts would be setting at nought the policy decision. The Government is absolutely competent not to fill up any post to upgrade those posts and to fill up those posts in accordance with revised Recruitment Rules.

13. We are satisfied that the Govt. has already taken a policy decision to abolish the posts of Head Masters and replace them with the posts of Vice. Principal. The Govt. is absolutely competent to take any policy decision with regard to creation and abolition of posts and the courts have no power to interfere with the same. The note submitted for the consideration of the cabinet was perused by us and we are satisfied that after the cabinet has given approval this has become the policy decision. The Supreme Court has already upheld the sovereign right of the executive to create or abolish posts. It is true that an enforceable decision has not been reached in this regard by way of an Act of the legislature. Even so, the court cannot interfere and set at naught the policy decision of the cabinet by insisting that the existing vacancies of Head Masters should be filled from the TGTs/LTs. This is not the role of the court. We have also enquired from the 1d. proxy counsel for respondents as to how much more time it will take to implement the policy decision by way of a formal notification. He states that it will take another 7-8 months."

17. If one has regard to the aforesaid directions one thing is clear that the right of respondents not to fill up vacancies and their policy decision to upgrade the post of Head Master and to fill up in

(12)

accordance with the recruitment rules and further decision to abolish the same to replace them with the post of Vice Principal has been held to be intra vires and the court has declined to interfere as any interference would have set at naught the policy decision of the Cabinet. Although till the new recruitment rules are notified the officiating status of applicants has been directed to be maintained but in so far as consideration of cases of applicants a direction was made to convene a DPC from the date of notification which a notification approving abolition of 206 posts of Head Masters and simultaneous abolition of matching saving of 206 posts of Head Master.

18. What has been challenged is an internal noting addressed to additional DE by the Directorate of Education this has not been addressed to applicants and pertains to an exercise to be undertaken to be replaced and the posts of Head Master in the schools where applicants are working and to notify the posts of Vice Principal. In absence of any communication to applicants these notings in the departmental file do not create any right in favour of employees and production of such notings in the court proceedings is not legally sustainable. The Apex Court in Puraniit Singh v. Union Territory of Chandigarh, AIR 1994 SC 237 observed as under:

"6. The petitioner's seniority has, therefore, to be counted in his parent Department which is the Engineering Department of the Chandigarh Administration, and he has also to earn his promotions in the said Department according to the rules and as and when the appointments are made to the vacancies which become available in that Department. He can neither count his seniority on the basis of his service prior to his fresh career as a direct recruit nor can he claim his promotion on the basis of the post or

(13)

posts that he had held in the organisations to which he was deputed. However, in spite of the clear position in law, he has been perusing his misplaced claim from counting his seniority prior to his fresh career of Assistant Engineer as a direct recruit and for promotions on the basis of the promotions which he had earned in the organisation where he was sent on deputation. For this purpose, he is relying upon certain notings either of the Chief Engineer or the Home Secretary of the Chandigarh Administration. Although it is not known how he came in possession of the said notings, it was improper on his part to produce these notings in the Court proceedings, assuming that he had come in possession of them authorisedly. As a responsible officer he ought to know that notings in the departmental file did not create any rights in his favour. It is the orders issued by the competent authorities and received by him which alone can create rights in his favour. This is apart from the fact that even those notings did not spell out any order in his favour. In the circumstances, the authorities on which the learned counsel for the petitioner relied are inapplicable to the facts of the present case."

19. If one has regard to the aforesaid ratio laid down by the Apex Court OA is not maintainable on this count alone, as the internal notings not addressed to applicants do not create any right or cause of action in their favour.

20. The directions issued by this court after upholding the policy decision regarding abolition of posts of Head Master and creation of posts of Vice Principal a DPC was to be convened to consider cases of applicants but this has been subjected to if applicants are senior enough to be eligible. As we find from the pleadings that applicants are not seniormost in their respective seniority list maintained as per seniority list 40 TGTs General/Langauge Teachers non-consideration cannot be treated as an act of wilful or contumacious disobedience. Moreover, if applicants were dis-satisfied with the manner

the orders of this Tribunal are implemented instead of filing the OA remedy before them was to file a contempt. A policy decision of the Government which has been upheld by the Tribunal and is neither malafide nor violative of Articles 14 and 16 cannot be interfered by the Tribunal. Apex Court in Director, Lift Irrigation Corporation v. P.K. Mohanty, 1991 (1) SCALE 399 held as follows:

"The decision to amalgamate the existing cadres by reorganising into two cadres was a policy decision taken on administrative exigencies. The policy decision is not open to judicial review unless it is mala fide, arbitrary or bereft of any discernible principle."

21. We find that applicants who have been put as incharge to work in the schools have ^{only} been allowed to draw the salary against the posts of Head Master but they are posted as TGT/General and Langauge Teachers and to draw further service benefits like senior scale against the substantive post of TGTs. Moreover, their resort to the earlier rules of 1972 to contend that TGT being a feeder cadre and the rules are in vogue created indefeasible right to be promoted as Head Master cannot be countenanced as Government has " every right not to fill up the vacancies and if the decision is bonafide for adequate reasons the same cannot be interfered with.

22. Another contention that the DPC was not held every year and remaining 266 posts of Head Masters are to be filled up amongst TGTs cannot be countenanced as after the middle schools have been converted into secondary and senior secondary schools as a policy decision it has been decided to post Vice Principal in each of the middle

schools. Not filling these posts for the last 30 years cannot be questioned as this cadre of Head Master is diminishing cadre and only those Head Masters who have come from middle schools of MCD in 1970 are continuing and also the surplus staff from Food Laboratories have been retained and are being regularised but no promotions have been held amongst the TGTs. For them another avenue under the rules is promotion to the post of PGT as per their seniority. Applicants being TGTs cannot be promoted as Vice Principals directly. Merely drawing salary against the post of Head Masters for the last five to six years would not create any right in their favour when such a posting has been done in administrative exigencies. A subsequent decision to abolish the cadre of Head Master and to convert the post of matching saving as Vice Principal being upheld cannot be gone into by this court, sitting over in appeal over the decision of the coordinate bench to which we respectfully agree.

23. In the result, for the foregoing reasons we do not find any infirmity in the orders passed by the respondents. Though in the interest of justice we have dealt with the merits of the case despite no cause of action has accrued to applicants on the basis of unofficial note, the OA is accordingly dismissed. No costs.

24. Interim order passed on 13.8.2002 is hereby vacated.

S. Raju
(Shanker Raju)
Member (J)

(Govindan S. Tampi)~
Member (A)