

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.963 of 2015

Orders reserved on : 06.02.2020

Orders pronounced on : 27.02.2020



**Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)**

Bhuvnesh Kumari,
(Retired as Vice Principal)
W/o Shri B.P. Singh,
R/o H.No.A-121, Gali No.4,
Jagatpuri, Mandoli Road,
Delhi-110093. Aged 61 years

(By Advocate : Shri Sourabh Ahuja)

.... Applicant

VERSUS

1. GNCT of Delhi,
Through Chief Secretary,
Delhi Secretary,
New Delhi.
2. Special Director of Education (SB),
Through Director of Education,
Department of Education,
GNCT of Delhi, Old Secretariat,
Delhi-110054.
3. Controller of Accounts
Principal Accounts Office,
GNCT of Delhi, 'A' Block,
Vikas Bhawan, New Delhi.
4. Secretary (Education),
Department of Education,
GNCT of Delhi, Old Secretariat,
Delhi-110054.
5. Director of Education,
Department of Education,
GNCT of Delhi, Old Secretariat,
Delhi-110054.

..... Respondents

(By Advocate : Shri Vijay Kumar Pandita)

O R D E R

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J) :



The applicant is a retired Vice Principal in PGT category, who is aggrieved by the order dated 12.8.2014 (Annexure-1) passed by the respondents, whereby her claim for notional promotion to the post of Principal from retrospective effect, has been rejected.

2. The brief facts, necessary to understand the controversy involved in this case, are that the applicant was initially appointed as TGT in the office of respondents on 18.3.1981. Thereafter, she was promoted to the post of PGT on 31.3.1989 and finally she was promoted to the post of Vice Principal, Govt. Higher Secondary School on 26.11.2002. She was also declared as head of school and DDO on 23.3.2003 and since then she continued to work in that capacity till she superannuated on 30.9.2013.

3. On 1.12.2011, the applicant was issued a chargesheet under Rule 16 of the CCS (CCA) Rules on the ground of lack of devotion to duty and for conduct unbecoming of a government servant. In brief, the charges against her were that she did not maintain the school premises properly. There was deficiency in available number of Desks and Daris for the girls to sit on; taps were not in working condition; works under 'Bala' Scheme were not executed properly; black boards



were in pathetic condition; there were no fans in the class rooms; window panes and grills of the class rooms were missing; school ground was covered with rain water; toilets were not provided with water, light and fresh air; projector supplied had not even been opened and there was shortage of teachers etc. Apart from all these deficiencies, the charge-sheet included one more charge against the applicant that she was found absent from duty between 2.09.2008 and 5.09.2008, without getting the leave sanctioned. It was mentioned in the charge-sheet that as a result of the pathetic condition of school premises, the girl students sat on an agitation on 1.09.2008 due to which the Deputy Director of Education visited the site and the above discrepancies were detected.

4. In the meantime, the Screening Committee of the school held a meeting on 9.2.2012 for considering the names of eligible candidates for granting *ad hoc* promotion to the post of Principal. The Screening Committee recommended the names of 78 male and 66 female candidates for *ad hoc* promotion to the post of Principal for the vacancy year 2011-12. However, the name of the applicant was not included in the list due to the reason that the aforesaid departmental enquiry was pending against her, at that time, As per the relevant rules, the recommendation of Screening Committee in respect of applicant was kept under sealed cover, though in pursuance of the recommendation of the Screening

Committee, the other candidates including some juniors of the applicant were promoted on *ad hoc* basis to the post of Principal.



5. Vide order dated 9.1.2013 of the Chief Secretary, the applicant was awarded the punishment of 'Censure', against which the applicant made a departmental appeal, which was rejected vide order dated 19.8.2013. As a result, the recommendations of DPC kept under sealed cover were not acted upon. The applicant preferred various representations to the respondents to convene review DPC and to consider her name for the said post on the ground that currency of the punishment of 'censure' inflicted on her, i.e., six months, was already over on 9.7.2013 and she was going to be superannuated on 30.9.2013 and all the candidates, who had been promoted on *ad hoc* basis were still continuing on the post of Principal on the said *ad hoc* basis, but no response was given by the respondents to any of her representations.

6. The applicant, being aggrieved against the inaction on the part of the respondents, preferred OA No.1103/2013 which was later on withdrawn by her with liberty to file fresh OA. Thereafter, the applicant preferred OA 1903/2014 which was disposed of by this Tribunal on 29.5.2014 with directions to the respondents to decide the representation of the applicant by a reasoned and speaking order within eight weeks. In compliance of the aforesaid Order, the respondents passed the order dated 12.8.2014 which has been impugned

in the present OA, whereby the claim of the applicant for retrospective notional promotion has been rejected by the respondents.



7. The legality and correctness of the impugned order dated 12.8.2014 has been challenged by the applicant in this OA, mainly on the following grounds:-

- (i) Admittedly, the applicant was declared fit by the DPC for vacancy year 2011-12 but she was not granted promotion to the post of Principal w.e.f. 19.10.2012 whereas her juniors were promoted to the post of Principal vide order dated 19.10.2012. Hence, in view of the law laid down by this Tribunal in the case of **P.G. George vs. Union of India and another** in OA No.1409/2009 and other connected cases decided on 22.4.2010, the applicant is entitled for grant of notional promotion to the post of Principal.
- (ii) Though the applicant was retired on 30.9.2013 but as the juniors of the applicant had already been promoted to the post of Principal prior to her retirement, therefore, the case of the applicant is squarely covered by the judgment of this Tribunal in **P.G. George's** case (supra) and the applicant is entitled for post retirement benefits and increments from retrospective date.
- (iii) The respondents did not appreciate that the penalty of 'Censure' imposed upon the applicant vide order dated

9.1.2013, will relate back to 1.12.2011, i.e. the date on which charge-sheet had been issued against her, as per the law laid down by the Hon'ble Delhi High Court in the case of ***Union of India and another vs. Dr. A.K. Khare and another*** (Writ Petition (Civil) No.3306/2010 decided on 6.8.2010) and, therefore, only on the ground of administrative delays in conducting DPC for the post of Principal within a stipulated time, the applicant cannot be put at a disadvantageous position in view of the well settled law that one cannot take advantage of its own wrong.



(iv) The applicant had preferred various representations before the respondents to convene DPC for regular promotion to the post of Principal and to consider her name for the said post because the currency of penalty of 'censure' inflicted on her on 9.1.2013 was already over after six months and she had also pointed out that she was superannuating on 30.9.2013 but the respondents did not take any action and ultimately they rejected her claim by the impugned order only on the ground that as she was not in service on the date of issuance of promotion order dated 26.5.2014, she was not found entitled for promotion to the post of Principal.

8. On the aforesaid grounds, the applicant has prayed that the impugned order be quashed.

9. To the contrary, the respondents have vehemently opposed the OA. In the counter reply filed by them, it has

been contended that this OA is not maintainable due to the reason that in a similar and identical W.P.(C) No.2969/2012 (***Ranvir Singh and another vs. Govt. of NCT of Delhi***), Hon'ble Delhi High Court has dismissed the petition vide Order dated 24.5.2013 in which it has been held as under:-



“4. The only question which calls for our consideration is whether the petitioner is entitled to be promoted on notional basis to the post of Principal. The admitted position is that the petitioner stood retired on May 31, 2010 i.e. before the date of promotion order, June 29, 2010. The issue is no more *res integra* inasmuch as a Division Bench of this Court of which one of us, Pradeep Nandrajog, J. was a member had decided a batch of writ petitions, lead matter being WP(C) No.8102/2012 *Union of India & Anr. v. K.L.Taneja* on the subject as to when can a person be granted promotion from a retrospective date. The Bench noted various decisions of the Supreme Court on the point as under:-

- “(i) 1987 (4) SCC 566 *K.Madhavan & Anr. vs. UOI & Ors.*
- “(ii) 1989 Supp (2) SCC 625 *Union of India & Ors. vs. K.K.Vadera & Ors.*
- “(iii) 1995 (4) SCC 246 *Vinod Kumar Sangal vs. UOI& Ors.*
- “(iv) 1998 (7) SCC 44 *Baij Nath Sharma vs. Hon'ble Rajasthan High Court At Jodhpur & Anr.*
- “(v) AIR 2004 SC 255 *P.N Premachandran vs. The State of Kerala & (vi) AIR 2004 SC 3460 Sanjay K.Sinha & Ors. vs. State of Bihar & Ors.*
- “(vii) 2006 (13) SCALE 246 *State of Uttaranchal & Ors. Vs.Dinesh Kr.Sharma*
- “(viii) 2007 (1) SCC 683 *State of Uttaranchal & Anr. vs. Dinesh kumar Sharma.*
- “(ix) 2008 (14) SCC 29 *Nirmal Chandra Sinha vs. UOI & Ors.*
- “(x) 2010 (4) SCC 290 *UOI & Anr. vs. Hemraj Singh Chauhan & Ors.”*

5. The Bench had held that the cornucopia of case law above noted brings out the position:-



"(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.

(ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.

(iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.

(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made."

10. Learned counsel for the respondents has next contended that two judgments cited by the applicant, namely, **Dr. A.K. Khare** and **P.G. George** (supra), are not applicable in the present case because facts are entirely different.

11. It is further contended that there was no inordinate delay in conducting DPC/Review DPC by the department as alleged by the applicant which can easily be seen by the following dates of events:-

12. The meeting of Departmental Screening Committee was held on 9.10.2012 to consider 144 vacancies for the year 2011-12 for promotion to the post of Principal from the feeder cadre of Vice-Principal on *ad hoc* basis. Accordingly, a

promotion order was issued on 19.10.2012 in which the name of the applicant was not included for the reason that at the time of DSC's meeting held on 09.10.2012, the applicant was found charge sheeted vide Memo No. F.5/12/2008/DOV/946-47 dated 01.12.2011 as per Vigilance Status Report received from Directorate of Vigilance, Govt. of NCT of Delhi and ADE (Vig.), Directorate of Education vide letter dated 29.05.2012 and 23.08.2012 respectively. Hence, the DSC assessed her promotion case "As in Sealed Cover" (Annexure A-5). The departmental enquiry took about one year for its completion and culminated into imposing of a penalty of "Censure" on the applicant vide order No.F.5/12/2008/DOV/227 dated 09.01.2013. The applicant filed a departmental appeal against the punishment order. The appeal was dismissed on 19.8.2013. For the purpose of next DPC, the requisite documents, i.e., ACRs of last five years from 2005-06 to 2009-10, Integrity Certificate, Work conduct Report, Penalty Statement of last 10 years and Vigilance Status Report etc. were sent to UPSC vide letter dated 24.06.2013 for regular promotion to the post of Principal. The meeting of Departmental Promotion Committee to consider the promotion to Vice-Principal to the post of Principal was held on 2nd, 3rd, 4th and 7th April, 2014 in the UPSC. The UPSC vide letter No.F.1/31/(17)/2013-AP.2 dated 09.04.2014 forwarded the recommendations of the DPC held on 2nd, 3rd, 4th & 7th April, 2014 for filling up of 180 posts of



Principal, however, the name of the applicant was not included in the promotion order for the reason that she had already retired on 30.09.2013 i.e. before the date of issuance of Promotion Order dated 26.5.2014.



13. In this regard, our attention has been drawn to DOP&T's OM No.22011/5/86 Estt.(D) dated 10.4.89, para 17.11 of which deals with the relevant date from which the promotion should take effect, which is reproduced as under:-

"In cases where the recommendations for promotion are made by the DPC presided over by a Member of the UPSC and such recommendations are required to be approved by the Commission also, the date of UPSC's letter communicating its approval or the date of actual promotion of the officer, whichever is later, will be the relevant date."

14. On the aforesaid grounds, it has been contended that in view of the above circumstances, there was no delay on the part of the respondents.

15. We have considered the rival submissions advanced by learned counsel for both the parties and have carefully gone through the records. We have also perused all the judgments cited by both the parties.

16. Insofar as the allegations made by the applicant on the respondents about the delay in conducting the DPC and review DPC is concerned, there does not appear any inordinate delay as such and even assuming for the sake of

arguments that somewhat delay took place for administrative reasons, it has been properly explained by the respondents.

17. The facts as mentioned in the OA clearly show that the departmental enquiry was pending against the applicant at the time when the meeting of Departmental Screening Committee was held on 9.10.2012 to consider 144 vacancies for the year 2011-12 for promotion to the post of Principal from the feeder cadre of Vice-Principal on *ad hoc* basis. The promotion order was issued on 19.10.2012. However, the name of the applicant was not included in that order and the recommendation of the said Committee in respect of the applicant was kept under sealed cover. The charge-sheet was issued to the applicant on 1.12.2011 which culminated into penalty of 'Censure' to the applicant vide order dated 9.1.2013. Thus, the departmental enquiry was concluded within a period of one year and seven days. The aforesaid time taken in completion of the departmental enquiry appears natural in view of several allegations against the applicant with which she was charged. The departmental appeal filed by the applicant against the penalty of 'censure' was rejected on 19.8.2013. Against the rejection order, the applicant filed OA No.1103/2013 and later on withdrew it with liberty to file another OA. She filed OA 1903/2014, which was disposed of on 29.5.2014 with directions to the respondents to decide her representation. The representation was decided by the respondents vide order dated 12.8.2014 which has been



impugned in the present OA. Thus the continuous chain of events clearly demonstrates that no deliberate departmental delay exists in the present case.



18. In view of the above, the judgment rendered by the Hon'ble Delhi High Court in the case of **Dr. A.K. Khare** (supra) is not found applicable in this case. In **Dr. A.K. Khare's** case, there was an inordinate delay in completion of departmental enquiry because though charge-sheet had been issued to **Dr. A.K. Khare** on 24.5.2006 and punishment was imposed on him in July 2010, i.e., after more than 4 years. During pendency of enquiry, **Dr. A.K. Khare** approached the Tribunal and this Tribunal, considering the inordinate delay, directed to open the sealed cover pending completion of departmental proceedings with a rider that it will be subject to review by disciplinary authority, if ultimately the applicant (Dr. A.K. Khare) is found guilty. It is also noteworthy that in the aforesaid case of **Dr. A.K. Khare**, the Hon'ble Delhi High Court, without going into the merits of the case, had disposed of the Writ Petition (C) No.3306/2010 preferred by the department against the said Order of this Tribunal, with the aforesaid direction of opening the sealed cover, during pendency of enquiry with a rider.

19. The second case on which the learned counsel for the applicant has placed reliance is of **P.G. George** (supra). Keeping in view the factual background of the case in hand,

we are of the firm view that the applicant cannot be given any benefit even out of this case because the facts in issue in **P.G. George**'s case are entirely different from the issue involved in the present case. The judgment of **P.G. George**'s case has been annexed by the applicant as Annexure-12). Para 2 of the said judgment, which is quoted below clearly indicates that the issue in that case was entirely different:-



“2. The question before us for consideration is whether the retired employees of the Government would be eligible for notional promotion retrospectively, if the meeting of Departmental Promotion Committee, held after their retirement, considers them fit for promotion and persons junior to them in service are promoted retrospectively from the dates, when such retired employees were in service.”

Thus, it is clearly evident that in **P.G. George**'s case, the DPC was held after retirement of some employees and some retired employees junior to **P.G. George** had been promoted retrospectively. In that situation, it was held in **P.G. George**'s case that the applicants are entitled to notional retrospective promotion.

20. Whereas in the case in hand, the employees junior to the applicant were serving as Vice-Principal on the date of their promotion which was given to them with immediate effect vide order dated 26.5.2014 and not with effect from any retrospective date as in the **P.G. George**'s case.

21. In **Ranvir Singh**'s case (supra), cited by the respondents, Hon'ble Delhi High Court after placing reliance

on several judgments of Hon'ble Apex Court has concluded the key principles as under:-

“6. From the above cited judgments, the following key principles emerge:

- (i) There is no rule that promotion should be given from the date of creation of the promotional post or from the date of vacancy.
- (ii) If promotion is effected prospectively from the date of issue of the order of promotion, retired employees prior to such date would not be eligible for promotion retrospectively. Even if retired employees are in the Select List or Panel for promotion, they cannot be given retrospective promotion when the promotion is prospective.
- (iii) if promotion is granted retrospectively and a person junior to the retired employee has been promoted from the date when the retired person was in service and if the retired employee has been found fit by the DPC and is available in the Panel or Select List, such retired employee would be entitled to promotion retrospectively on notional basis from the date his immediate junior has been promoted.”

(emphasis supplied)

Now reverting to the case in hand, it is clearly evident from the facts that the promotion order was passed on 26.5.2014. The applicant had already retired on 30.9.2013. The promotion was not retrospective and no junior of applicant had been promoted retrospectively when the applicant was in service.

22. In so far as the order dated 19.1.2012 by which *ad hoc* promotions were made, is concerned, the applicant could not have been promoted at that time due to the reason that a



departmental enquiry was pending. At the review DPC, she was not considered because she had been retired.

23. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. I.A. Qureshi**, reported in 1998(9) SCC 261, has held as under:-



"It cannot, therefore, be said that the penalty of censure which was imposed on the respondent in the departmental proceedings was not a penalty as contemplated in the circular dated 2-5-1990. Once it is held that a minor penalty has been imposed on the respondent in the departmental proceedings, the direction given in the said circular would be applicable and the sealed cover containing recommendations of the DPC could not be opened and the recommendations of the DPC could not be given effect because the respondent has not been fully exonerated and a minor penalty has been imposed. The respondent can only be considered for promotion on prospective basis from a date after the conclusion of the departmental proceedings."

24. Learned counsel for the applicant has vehemently contended that the punishment of 'Censure' will relate back to the date of occurrence, i.e. in the year 2008. This argument is untenable in view of the law laid down by the Hon'ble Apex Court in the case of **Union of India vs. A.N. Mohanan**, reported in 2007(5) SCC 425, in which it has been held as under:-

"11. Awarding of censure, therefore, is a blameworthy factor. A bare reading of Rule 3.1 as noted above makes the position clear that where any penalty has been imposed the findings of the sealed cover are not to be acted upon and the case for promotion may be considered by the next DPC in the normal course.

12. Having regard to the penalty imposed on him, undisputedly the respondent has been given promotion

with effect from 26.11.2001. His claim for promotion with effect from 1.11.1999 was clearly unacceptable and, therefore, the CAT and the High Court were not justified in holding that he was entitled to be promoted with effect from 1.11.1999. The order of High Court affirming the view taken by the CAT cannot be sustained and is, therefore, set aside.”



25. It is also noteworthy that the applicant had earlier filed a Writ Petition (WP(C) No.771/2018) in Hon'ble Delhi High Court against the order dated 19.8.2013 passed by Hon'ble Lt. Governor, NCT of Delhi (Appellate Authority) dismissing her appeal against the penalty of 'censure'. This writ Petition was dismissed on 23.1.2018 and Hon'ble High Court, while dismissing her Writ Petition, had observed as under:-

“18. No doubt, due to the penalty of “Censure” imposed on her, the petitioner has lost an opportunity of re-employment. But that cannot be a ground for interfering in the order of penalty imposed on her by the respondents. Rather, we are of the opinion that looking at her transgressions and dereliction of duty, the petitioner has been let off lightly by the respondents.”

26. In view of the above observations of Hon'ble High Court against the applicant, even if DPC had met before her retirement, there were seldom chances of her promotion to the post of Principal in view of the settled position that neither any DOP&T's OM nor any relevant rule prescribes that after opening the sealed cover, the department is bound to give promotion to its employee. All the rules and even the judgments laying down the law on this aspect, prescribe in unequivocal terms that the DPC while considering the

question of selection of officers for promotional post, shall assess the suitability of the officer on the basis of entire service record and overall grading.



27. Keeping in view the entire facts and circumstances of the case, it cannot be said that the denial of notional promotion by the respondents to the applicant was unjustified.

28. For the aforesaid reasons, as discussed above, we find no merit in the present OA. It is liable to be dismissed and is dismissed accordingly. No costs.

(Pradeep Kumar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/ravi/