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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.101/2001

This the 29th day of March 2007

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI N. D. DAYAL, MEMBER (A)

Ms. Shakuntala Sharma,
R/O H. No.117, Sector 37,
Faridabad.

... Applicant

(By Shri G.D.Gupta, Sr. Advocate along with Shri S.K.Sinha, Advocate)

Versus

1. Government of NCT of Delhi through
Lt. governor of Delhi,
Raj Niwas Marg, New Delhi.
2. Principal Education Secretary (Education),
Government of NCT of Delhi,
General Administration Department
(Education Deptt.), Delhi.
3. Director of Education,
Directorate of Education,
Government of NCT of Delhi,
Delhi.
4. Shri Balwan Singh,
ADE (PE/W),
Chhatrasal Stadium
Directorate of Education.
5. Ms. Asha Aggarwal,
ADE (Sports),
Chhatrasal Stadium,
Directorate of Education.
6. Shri Satish Sonkar,
ADE (PE),
Chhatrasal Stadium,
Directorate of Education.

(By Shri S.K.Gupta for Shri Vijay Pandita, Advocate for Respondents 1 to 3; Shri D.R.Gupta, Advocate, for Respondents 5 and 6; None for respondent No.4)

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ORDER

Hon'ble Shri N. D. Dayal, Member (A):

The applicant had filed this OA on 9.1.2001. When this OA was taken up on 11.1.2001, an interim order was passed that any promotions made by the respondents will be subject to final outcome of this OA. The applicant has impleaded three private respondents No.4, 5 and 6. An MA No.827/2003 filed by the applicant to place additional facts and documents on record was disposed of in view of the statement by the counsel for respondents that the documents may be taken on record for consideration at the time of final arguments in the matter. Another MA No.1820/2003 for amendment of the application to challenge an order that had been passed in the meanwhile and incorporate additional prayer clause, was allowed on 1.9.2003. Thereafter, amended OA was filed to which replies were preferred by respondents 1 to 3. Whereas private respondent No.4 was satisfied with the old reply itself, private respondents 5 and 6 filed reply to the amended OA. Rejoinder has been preferred against the replies.

2. The Tribunal having heard the parties, passed an order on 5.1.2005 noting that the applicant had challenged the appointments of respondents 4, 5 and 6 to the post of Assistant Director of Education (Physical Education) [ADE (PE), for short]. It was found that following Tribunal's order in OA No.2160/1988, the Delhi Administration having confirmed the genuineness of the assurance given to respondent No.4, continued him as Supervisor and further promoted him as ADE (PE). He has, however, since retired. The applicant was also promoted as ADE (PE&NI) on 5.12.2003, which she seeks to be ante dated. However, she



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has also retired in the meanwhile. Respondents 5 and 6 had opposed the maintainability of the OA, *locus standi* of the applicant on the ground that they had been promoted in a different cadre, alleged that the applicant had sought multiple relief and filed the OA, which was in the nature of a public interest litigation, without any application for condonation of delay. The Tribunal came to the conclusion that no one could be promoted *de hors* the recruitment rules even if a long time had elapsed in view of the Apex Court decision in *Anand Kumar v Prem Singh* [(2000) 10 SCC 655]. It was specifically observed that in the case of respondent No.4, the minimum qualification of post-graduation in physical education for appointment on promotion as Supervisor had not been taken into account. Therefore, the decision in OA No.2160/1988 was considered to be *per incuriam* in the light of Apex Court judgment in *Fuerst Day Lawson Ltd. v Jindal Exports Ltd.* [(2001) 6 SCC 356]. It was, therefore, found appropriate to refer the matter to a larger Bench by placing the case before the Hon'ble Chairman on the administrative side. The preliminary objections as to maintainability were left open to be decided on remand back of the matter to the Division Bench.

3. The larger Bench framed the following question to be answered:

"The order dated 12.1.1994 in OA N.2160/1988 Bujender Singh & Others vs. Lt. Governor of Delhi, so far as it related to respondent No.4 Shri Balwan Singh is not in accordance with law and is liable to be set aside."

After hearing the arguments advanced before them, the Bench in their order dated 25.8.2005 felt that in the first instance a decision was required to be taken on the preliminary objections raised by respondents 5 and 6 over the

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issue of maintainability of the OA keeping in view the law on the subject.

Therefore, the matter was returned back to the Division Bench without answering the question framed, to decide the preliminary issues first and then decide the merit of the case and then, if need be, the matter may be referred to the larger Bench again after framing the question to be answered.

4. The preliminary objections taken by respondents 5 and 6 were also noted by the larger Bench in para 2 of their order as under:

- (i) that the applicant has no *locus standi* to challenge the appointment of respondents 5 and 6;
- (ii) that respondent No.5 is neither a proper nor necessary party and as such respondent No.5 has been wrongly impleaded and it is a case of mis-joinder of parties;
- (iii) that the OA is barred by rule 10 of the CAT (Procedure) Rules, 1987 which provides that an application shall be based upon a single cause of action and may seek one or more reliefs provided they are consequential to each other;
- (iv) that the OA is barred by limitation; and
- (v) that the OA is in the nature of a public interest litigation over which the Tribunal has no jurisdiction.

5. We have heard the learned counsel for the parties. The official respondents have produced the original records and the applicant has filed written submissions with leave of the Court. The relief claimed by the applicant is as follows:

“(a) declare that the seniority list Supervisor, Physical Education dated 07.3.2001 for the period April 1992 to Dec 1995 as arbitrary and against law declared by the Hon’ble Supreme Court and thus a nullity and the respondents be directed to revise the seniority list of SPE’s and make promotions to the post of ADE(PE) only as per the RR’s and the revised seniority list.

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(b) quash the Orders dated 31/7/98 and 24/8/2000 direct that resp No. 4, 5 and 6 be reverted to their original position.

(bb) Declare that appointment and confirmation of the Respondent No.4 Sh. Balwan Singh to the post of Supervisor and consequent promotion to Assistant Director on 24.3.2000 as a nullity in the eyes of law.

(c) direct that one post of ADE(PE) which has been converted to the post of ADE(Sports) to adjust Resp No.5 be restored to its original position.

(d) That the Applicant be promoted to the post of ADE from the date her juniors have been promoted and that the Applicant be given all consequential benefits as well.

(e) And/or any other order/orders which your lordship may deem fit and proper in the facts and circumstances of the case."

6. We have first taken up consideration of the preliminary objections raised by the private respondents and relevant averments as contained in their counter replies to the OA. Respondent No.5 is Smt. Asha Aggarwal who has claimed that she was appointed to the post of ADE (Sports) by direct recruitment which is a distinct cadre from that of ADE (PE&NI) to which the applicant belongs. She was an *Arjuna* awardee and appointed consequent on promotion of Shri Sat Pal to the post of DDE (Sports). The applicant has, therefore, no *locus standi* to challenge this appointment and is not entitled to any relief against her. Only persons who are directly and immediately affected by the impugned orders can be considered to be aggrieved as held by the Apex Court in *Gopabandhu Biswal v Krishna Chandra Mohanty* [JT 1998 (3) SC 280]. As such, being not the proper or necessary party, she contends that her impleadment is wrong and be deleted. It has been further stated that in terms of the Supreme Court judgment in *P.U. Joshi v Accountant General, Ahmedabad* [(2003) 2 SCC 632], it is a matter of Government policy to convert a post

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of ADE (PE&NI) into ADE (Sports) and, therefore, such policy decision should not be interfered with. Since respondent No.5 was appointed by direct recruitment to such diverted post which was re-designated as ADE (Sports), she is not borne on the cadre of PE (Physical Education).

7. Respondent No.6 has claimed that he was promoted to the post of Supervisor (Edn.) in the pay scale of Rs.650-1200 on regular basis on 30.11.1983 on recommendations of DPC held in accordance with the RRs notified on 19.9.1970 and the seniority fixed on 12.9.1988 in the grade of Supervisor (PE) at Sl. No.17 of the seniority list. Such seniority issue settled in the year 1983 itself cannot be raised now by the applicant who was promoted in 1992 as Supervisor (PE) eight years later. Besides having accepted promotion as Supervisor (PE) w.e.f. 10.4.1992 without protest, he cannot be permitted to agitate the matter claiming seniority from a prior date in view of Section 115 of Evidence Act, 1972 and judgment in *A. K. Mitra (Dr.), DG CSIR v D. Appa Rao* [(1998) 9 SCC 492]. It is stated that the DPC in pursuance of Tribunal's order dated 8.5.2000 in OA No.1377/1996 considered the case of the applicant who is an SC candidate along with another SC candidate and recommended his name for promotion as ADE (PE&NI), as also evident from para 4 of Tribunal's order dated 16.11.2002 in OA No.11/2002. The vacancy related to the year 1992-93. In fact he is due for promotion as Dy. Director in terms of review DPC recommendations dated 20.8.2002 which is yet to be granted.

8. Respondents 5 and 6 have recorded further preliminary objections in the following terms in their counter reply at pages 1 and 2 thereof:

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- “(iv) The Applicant cannot seek multiple relief being barred by Rule 10 of the CAT (Procedure) Rules 1987, which provides that an application shall be based upon a single cause of action and may seek one or more relief provided they are consequential to each other.
- (v) The O.A. is barred by limitation having not been filed within one year from the date of impugned order.
- (vi) The present O.A. is in the nature of public interest litigation over which the Tribunal has no jurisdiction.”

9. Insofar as respondent No.4 is concerned, his appointment as Supervisor (PE/Wrestling) had been challenged in OA No.2160/1988 decided on 12.1.1994, by nine applicants which did not include the applicant in the present case. The Tribunal having considered the submissions made passed the order dated 5.1.2005 in the present OA by which reference was made to a larger Bench primarily because it was felt that relevant RRs could not have been ignored in favour of an assurance of appointment given to him. The applicant has sought quashing of orders dated 31.7.1998 by which respondent No.4 was promoted from Supervisor (PE) to ADE (PE&NI) on *ad hoc* basis as well as his promotion on regular basis to this post by order of 24.3.2000.

10. The respondent No.4 has stated that the applicant is much junior to him and cannot contest his appointment as ADE (PE&NI) on regular basis since the order of *ad hoc* appointment dated 31.7.1998 stands superceded accordingly. He has annexed at R-1 to the reply a copy of final seniority list dtd 12.9.1998 in respect of Supervisor (PE) of Admn. Cadre and School Inspectors (PE) of Special Cadre, which shows names of eight persons under the list of School Inspectors and only the name of respondent

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No.4 under Supervisor (PE/Wrestling). It is contended that the applicant does not belong to the discipline of Wrestling and, therefore, cannot assail his appointment and promotion which was based upon directions of the Tribunal in OA No.2160/1998. It is, however, noted that the above seniority list gives no clue as to the *inter se* seniority of the applicant vis-à-vis the respondent No.4 or even respondent Nos. 5 and 6. From the additional affidavit filed on 14.2.2003 on behalf of the respondents, it is seen that seniority list of Supervisor (PE) of 12.9.1998 containing 17 names was separate from the seniority list of that date which has been submitted by respondent No.4 claiming that the applicant was junior although the latter's name does not appear therein.

11. From the reply of official respondents 1 to 3, it is noticed that respondent No.5 was promoted on *ad hoc* basis as per the approval of the Hon'ble Lt. Governor of Delhi by converting one post of ADE (PE) to ADE (Sports). However, it is submitted that respondent No.6 was promoted as ADE according to the provisions of the RRs. It is stated that respondent No.4 was promoted also according to the provisions of RRs following enquiry report by Secretary (Education) in compliance of Tribunal's directions in OA No.2160/1988. The promotion of respondent No.6 is against the post reserved for SC by a duly constituted DPC. It is further stated that respondent No.6 was promoted as Supervisor (PE) as per the RRs. On the other hand, respondent No.5 was initially appointed as Senior Sports Teacher under meritorious sportsmen category and allowed to draw salary against the post of Junior Science Counselor. Her promotion to Supervisor (PE) was rejected by the UPSC. However, the competent authority appointed her against the post of ADE (Sports) on *ad hoc* basis.

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dated 7.3.2001 the names of the private respondents 4, 5 and 6 appear.

Therefore, this seniority list does not by itself make clear the *inter se* seniority position of the applicant vis-à-vis the three private respondents. It has been *inter alia* stated by the applicant in para 5 of MA No.1820/2003 that the seniority list dated 7.3.2001 is *prima facie* bad as it is incomplete. We are, therefore, unable to appreciate the grievance of the applicant against the three private respondents in terms of the seniority list appended to the OA. The applicant is contesting promotions of the private respondents, but the relevance of this extract of seniority list to the relief sought against them and their promotions to the posts of ADE (PE) as well as its relevance to her own promotion from the same date as the juniors with consequential benefits, is not clear. This seniority list is of 7.3.2001 whereas the promotions assailed are of earlier dates. No other private respondents have been impleaded. It is, therefore, not clear as to how the seniority of the applicant would bring her within the zone of consideration earlier than the date on which she has already been promoted as ADE (PE) in 2003 if she were to succeed vis-à-vis the private respondents.

13. The applicant is further seeking the quashing of order dated 24.8.2000 by which private respondent No.5, who was appointed as ADE (Sports) on 5.7.2000 on purely *ad hoc* basis for a period of six months or till regular appointment on the post, whichever was earlier, had been taken on strength of the Directorate of Education. It has been made clear therein that she would have no right to regular promotion or seniority by such appointment. She was asked to submit all files to Joint Director of Education through DDE (Sports) and all files of Sports Branch through ADE (Sports). It would appear that there were two posts of ADE (Sports)

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being operated. The applicant is seeking reversion of respondent No.5 to original position and restoration of the one post of ADE (PE) which has been converted to ADE (Sports) for the purpose. It is noticed that the RRs of ADE (PE&NI) notified on 24.7.1995 in supersession of earlier rules dated 4.11.1974 are placed at Annexure-2 of the OA. These seem to be quite different from the RRs of ADE (Sports) at Annexure R-5 to the reply to MA No.827/2003 filed by respondents 1 to 3. This notification is dated 22.5.1986 and clarifies that although the number of posts is only one in 1985, it is subject to variation dependant on workload. This further provides for direct recruitment only whereas the RRs for ADE (PE&NI) specify the method of recruitment only by promotion. The other terms and conditions also vary. It has been admitted by the respondents that one post of ADE was utilized to induct the respondent No.5 as ADE (Sports) by the competent authority who also appointed her as per the relevant rules. Thus, the grievance projected by the applicant against respondent No.5 also does not appear to constitute a consequential relief with reference to the seniority list of Supervisor (PE) and the recruitment ADE (PE&NI).

14. As regards respondent No.6, it is seen that he was promoted as Supervisor (PE) on regular basis on 30.11.1983 and as ADE on 24.3.2000 keeping in view that he was a reserved category official. It has been submitted by respondent No.6 that the relevant recruitment rules were of 1970 for promotion as Supervisor (PE). It is evident that in OA No.1737/1998 decided on 25.10.2000 the applicant along with two others had prayed for determination of *inter se* seniority in the cadre of Supervisor (PE) and finalize the seniority list of Supervisor (PE) in view of Supreme court judgment dated 10.10.1995 in the case of *Union of India v Veer Pal*

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Singh Chauhan & Others and DOP&T OM dated 30.1.1997 with regard to general category officials regaining seniority on promotion vis-à-vis reserved category persons junior to them but promoted earlier. In that OA the present respondent No.6 was impleaded as the only private respondent and evidently such relief was sought against him. No doubt the final seniority list was subsequently issued on 7.3.2001^o and the relief claimed against respondent No.6 could be said to be linked to the same although the *inter se* seniority position is not clear therefrom, as noted above.

15. In view of the above discussion, we are of the opinion that the reliefs sought by the applicant do not stem from the same cause of action but appear to require different facts to be pleaded in each case. Therefore, it cannot be said that the reliefs claimed are not multiple reliefs which attract the provisions of rule 10 of the CAT (Procedure) Rules, 1987 whereby it is specified that an application before the Tribunal shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another. The learned counsel for the applicant vehemently argued that the applicant is aggrieved by the appointment/promotion of the private respondents and, therefore, their impleadment cannot be called into question. He pointed out at length the infirmities and illegalities perceived by the applicant in this regard and as such justified the reliefs claimed in the application. In our opinion, if the applicant is aggrieved, it is open to her to seek relief by filing better application(s), in accordance with law. It is also seen that by her written submissions the applicant has requested that the preliminary objections of respondents 5 and 6 be rejected and the matter be referred to Full Bench upon the question of validity of appointment of respondent No.4. As such

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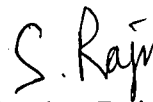
this cannot be taken as a submission on the part of the applicant to confine the matter only to the pleadings relating to the relief sought vis-à-vis respondent No.4.

16. We, therefore, hold that this application is not maintainable on account of multiple reliefs that have been prayed for contrary to the provisions of rule 10 noticed above. In this view of the matter, we do not consider it necessary to specifically examine the other preliminary objections that have been raised or to proclaim on the merits of the OA. The application is, therefore, dismissed as not maintainable. Interim order is vacated. No costs.



(N. D. Dayal)
Member (A)

/as/



(Shanker Raju)
Member (J)