

Central Administrative Tribunal, Principal Bench (8)  
New Delhi

O.A. No.2716/2001

New Delhi this the 4th day of March, 2002

Hon'ble Smt. Lakshmi Swaminathan Vice Chairman (J)  
Hon'ble Mr. M. P. Singh, Member (A)

Smt. Sarda Devi S.  
W/o. Shri M.V. Murthy,  
Research Officer,  
(Previously Designated  
as Asstt. Education Officer)  
CHD, Correspondence Course Deptt.,  
Central Hindi Directorate,  
West Block No.VII, R.K. Puram,  
New Delhi-110066.

Resident of:

A-59, Pandara Road,  
New Delhi-11003.

- Applicant

(By Advocate : Shri K.L. Bhandula with Shri M.L. Ohri)

Versus

1. Secretar to the Govt. of India,  
Ministry of Human Resources Development,  
Dept. Secondary Education & Higher  
Education, Shastri Bhavan,  
New Delhi-110003.
2. The Director, Central Hindi Dte.,  
West Block No.VIII, R.K. Puram,  
New Delhi-110066.
3. Secretary to the Govt. of India,  
Department of Personnel & Training,  
North Block, New Delhi-110001.

- Respondents

(None Present)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Notice in this case had been issued on 10.10.2001  
in which it has been already stated that if any promotion  
is made in between, it will be subject to the out-come of  
the OA. As none has appeared for the respondents on  
several dates when OA was listed nor have they cared to  
file reply to the OA, Shri Madhav Panikar learned  
counsel, who is in the panel of Central Govt. counsel,  
was vide order dated 1.11.2001 directed to take note of

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the case and file their short reply to interim relief. Thereafter the case was listed on 28.11.2001 and 7.1.2002 but as mentioned above no reply has yet been filed on behalf of respondents. Today when the case was listed after notice, Shri Madhav Panikar was present. He has submitted that in spite of his best efforts to contact respondents, particularly R-1 and R-2, whose Memo dated 27.2.2001 has been impugned in the present OA. He has submitted that he has not received any instructions or parawise comments to enable him to file reply. He, therefore, prays that his name may be deleted as counsel for respondents as he is unable to make any submissions on their behalf.

2. In the above circumstances, we note that respondents neither have cared to be present nor filed any reply till date. We have accordingly proceeded to hear Shri M.L. Ohri, learned counsel for applicant under Rule 16 of CAT (Procedure) Rules, 1987 issued under the provisions of the Administrative Tribunals Act, 1985.

3. It is noticed that the applicant had earlier filed an application (OA No.1717/1997) against the same respondents, which was disposed of by Tribunal's order dated 21.8.2000. In that application, applicant had impugned the order dated 2.5.1997 (page 22 of the paper-book) in which it has been mentioned that the regular promotion of the applicant in the grade of Assistant Education Officer (A.E.O) should be read as 7.9.1993 (FN) instead of 12.12.1990 (FN). According to Shri M.L. Ohri learned counsel, the Tribunal in the

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aforesaid order has quashed the impugned order dated 2.5.1997. He has further contended that the order dated 27.2.2001 impugned in the present OA should be quashed and set aside by revising the applicant's seniority as A.E.O. w.e.f.12.12.1990 instead of 7.9.1993 and on that basis give her further promotions in accordance with the rules.

4. We have carefully perused the judgement/order of the Tribunal dated 21.8.2000 in OA No.1717/1997. The relevant portion of the order (Paras 5 and 6) read as follows:-

"5. We have given careful consideration to the contentions raised by the learned counsel for applicant and the pleadings in the case. The facts are not in controversy. The applicant has been working as Assistant Education Officer w.e.f.12.12.90, on ad hoc basis. The perusal of the order dated 3.2.94 shows that the applicant had been promoted on the recommendation of the DPC, on regular basis w.e.f.12.12.90. Hence the applicant acquires rights of seniority from the date of regular promotion for the post of Assistant Education Officer (R.L.). Law is well settled that the seniority cannot be disturbed without hearing the affected employee. The contention that no notice is necessary when the seniority was sought to be disturbed is incorrect. Though the order has been passed in 1994 promoting the applicant on regular basis, infact, the applicant's promotion was on w.e.f. 12.12.90. As the applicant acquired valuable rights of seniority from 12.12.90 this right cannot be disturbed or altered without hearing him. In the circumstances the impugned order has to be quashed.

6. Respondents are, therefore, directed if they so choose, to proceed only after giving an opportunity to make representation against any action that may be taken for altering seniority. It should be made clear that we have not expressed any opinion on the merit of this case. The OA is, accordingly, allowed. No costs."

*VJ*

5. The impugned Memo dated 27.2.2001 has been issued by respondents purportedly in pursuance of the aforesaid order of the Tribunal in which they have stated, inter alia, that the earlier impugned order dated 2.5.1997 is being quashed and her seniority in the grade should be revised in accordance with the rules for which they have issued a show cause notice. Admittedly, the applicant has submitted a representation dated 7.3.2001 to this Memo. According to the learned counsel for applicant she has not received any intimation thereafter from the respondents.

6. As mentioned above, the respondents have also not cared to inform us as to what further action, if any, they have taken in pursuance of the Memo dated 27.2.2001, in spite of the umpteen opportunities given to them and the efforts made by Shri Madhav Panikar, learned counsel who had done so on our directions.

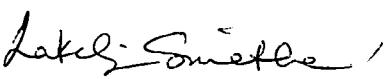
7. Taking into account the earlier order of the Tribunal and, in particular, the later portion of paras 5 and 6 wherein the Tribunal has specifically mentioned that they have not expressed any opinion on the merit of the case, we are unable to agree with the contentions of Shri M.L. Ohri, learned counsel that the applicant's seniority as per the earlier order had to be restored immediately. The respondents have issued the Memo dated 27.2.2001 in pursuance of the directions contained in paragraph 6 of the Tribunal's aforesaid order and have given her an opportunity to make a representation against their proposed action to alter the seniority. No doubt, the

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respondents should keep in view the observation made by the Tribunal in that order, including the fact that "the applicant acquired valuable rights of seniority from 12.12.90" and this right cannot be disturbed or altered without hearing her.

8. In view of the above, OA is disposed of with a direction to the respondents to take an appropriate decision in the matter with regard to the show cause notice dated 27.2.2001 to which the applicant has also given a reply. It appears that though nearly one year has passed but nothing has been done by them. In the circumstances, necessary action shall be taken within two weeks from the date of receipt of a copy of this order, with intimation to the applicant. They shall also keep in view the aforesaid observations of the Tribunal in order dated 21.8.2000 in OA No.1717/1997. No order as to costs.

  
( M.P. Singh )  
Member(A)

  
( Smt. Lakshmi Swaminathan )  
Vice Chairman (J)

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