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Central Administrative Tribunal, Principal Bench

Original Application No.3228 of 2001

New Delhi, this the 13th day of December, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member(A)

V.B. Bhatnagar S/o Shri I.B. Bhatnagar,
R/o C-44, South Moti Bagh,
New Delhi-21
Principal, Jose Marti Sarvodaya Vidyalaya,
Sector XII, R.K. Puram,
New Delhi-22

....Applicant

(By Advocate: Shri C.B. Pillai)

Versus

1. Union of India through
The Lt. Governor,
National Capital Territory of Delhi,
Raj Niwas, Delhi.,
2. The Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi-6
3. The Principal Secretary (Education),
N.C.T. of Delhi,
Education Department,
Old Secretariat, Delhi-6
4. The Director of Education,
Directorate of Education,
Old Secretariat,
Delhi-6

....Respondents

(By Advocate: Shri George Paracken)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicant had been working as a Principal in a School. He was promoted to the post of Education Officer/Assistant Director of Education. It appears that he had suffered a multiple fracture and on 2.11.99, he addressed a letter to the Director of Education mentioning that he had met with an accident and suffered multiple fractures. He mentioned further that he has been advised to avoid excessive travelling. He should be allowed to

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continue as Principal of the same school and it will not be possible for him to do field duties.

2. Applicant had earlier been promoted and the order dated 7.12.99 pertains to his posting. He had joined the said duties.

3. On 7.4.2000, the applicant had informed the department that he could continue as Assistant Director/Education Officer but on 5.1.2000, the impugned order had already been passed whereby with respect to the applicant, it was mentioned that the promotion orders to the post of Education Officer/Assistant Director are cancelled with immediate effect at his request with the condition that he will not be considered for promotion to the post of Education Officer/Assistant Director of Education in future.

4. The grievance of the applicant is pertaining to the order whereby he has been debarred for being considered for promotion to the post of Education Officer/Assistant Director of Education in future.

5. Our attention is being drawn to the Govt. of India instructions dated 1.10.1981 which reads -

"17.12 When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next persons in the selection list may be promoted. However, since it may not be

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administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh order of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion vis-s-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where ad-hoc promotions against short term vacancies are refused.

[In case where the reasons adduced by the officer for his refusal for promotion are not acceptable to the appointing authority, then he should enforce the promotion of the officer and in case the officer still refuses to be promoted, then even disciplinary action can be taken against him for refusing to obey his order.]"

6. The above said instructions make the position clear that applicant could not have been debarred permanently for being considered for promotion in future. The embargo at best could be for a period of one year or till the vacancy arises.

7. What is the position herein? The period of one year referred to above has expired long back and in the meantime, the department has promoted certain other persons. Those persons are not parties before us. Any order so passed to give retrospective effect to the promotion of the applicant would affect their rights and in the facts and circumstances referred to above, it will not be appropriate to do so.

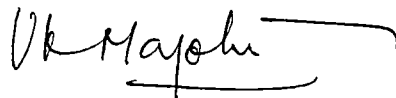
8. In these circumstances, we quash the order of 5.1.2000 and modify the same in terms that in future any promotion that occurs henceforth namely to the post of

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Education Officer/Assistant Director of Education, the applicant would be considered in accordance with law. With these directions, the O.A. is disposed of.



(V.K. Majotra)
Member(A)



(V.S. Aggarwal)
Chairman

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