

Central Administrative Tribunal
Principal Bench

O.A. 1930/99

New Delhi this the 11 th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tamai, Member(A).

Vidya Wati,
D-1/46, Lodhi Colony,
New Delhi-110 003. Applicant.

(By Advocate Dr. M.P. Raju)

Versus

1. Govt. of NCT of Delhi
through Secretary Education,
Department of Education,
Old Secretariat,
Delhi.
2. Director of Education,
Old Secretariate,
Delhi.
3. Smt. Sushila Kaul,
Vice Principal,
Govt. Girls Senior Sec. School,
Ghitorni, Mehrauli,
New Delhi. Respondents.

(By Advocates Mrs. Neelam Singh - for Respondent 1 and 2,
Shri K.P. Dohare - for Respondent 3)

O R D E R

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

In this application, the applicant has sought the relief that she may be given promotion and seniority to the grade of PGT w.e.f. 1975 or at least before 21.11.1979, that is the date from which her junior Smt. Sushila Kaul, Respondent 3, has been given, with consequential benefits of pay and allowances with effect from the date of her promotion.

2. The respondents in their short reply filed on 26.4.2000 have submitted that the seniority of Respondent 3 whose case has been made the basis by the applicant is

182

being reviewed separately for which a show cause notice has been issued to her vide Memo dated 23.3.2000. Later, in their reply filed on 5.7.2001, they have submitted that the seniority wrongly assigned to Respondent 3 has already been rectified and she has been given seniority No.632-A vide Corrigendum order dated 22.11.2000. The applicant has amended the O.A. wherein she has now compared her case with some other teachers, namely, Smt.Ram Kumari, Smt. Parkash Kaur and Smt. Janak Kumari but these persons have not been impleaded in the O.A. as necessary parties. This objection taken by the respondents has to be allowed, taking into account the facts and circumstances of the case. The respondents have also taken the plea of limitation as the applicant is seeking promotion w.e.f. 1975 or 21.11.1979, from the date Respondent 3 was promoted.

3. The above pleas have been controverted by the applicant in the rejoinder, stating that what has been impugned is the wrong, illegal and arbitrary action of the respondents in refusing to grant her legal rights and not against any particular individual. She has also submitted that the cause of action has arisen within the period of limitation. Dr. M.P. Raju, learned counsel, has drawn our attention to the Tribunal's order dated 17.7.2000 condoning the delay.

4. The main contention of Dr. M.P. Raju, learned counsel is that when the applicant became eligible for promotion to the post of PGT, she ought to have been considered for such promotion. He has relied on the Office Order dated 23.8.1975 issued by the Principal of the School

which has been entered in applicant's Service Book, showing, inter alia, that she had passed M.A. examination in Hindi from Punjab University in 1975. His contention is that when the records, like the Service Book are available with the respondents, they ought to have considered her for promotion at the appropriate time in accordance with the relevant rules. He has submitted that it was the duty and responsibility of the respondents to prepare the required seniority list and eligibility list as per the information available with them in the records.

5. The respondents have controverted the above submissions and have submitted that by various circulars issued by them, a teacher who possesses the requisite qualifications has to fill up the proforma to include her name in the eligibility list, in case that has been left out. According to them, the applicant had applied for such promotion post of PGT (Hindi) in the year 1982-83. They have contended that in the circumstances, there was no question of including her name in the eligibility list prior to that date when she had herself applied. The respondents have taken a stand that her mere intimation to the Department that she has acquired the educational qualification of Post Graduation in a particular subject does not mean that her name will be included in the eligibility list.

6. As the main issue raised in this application was with regard to whether the applicant had applied in a particular proforma in accordance with certain circulars said to have been issued by the respondents from time to time, the respondents were directed to bring necessary

Y/

circulars for the relevant years of 1975 and 1979 or thereafter, to substantiate their stand. Mrs. Neelam Singh, learned counsel for Respondents 1 and 2, has submitted a bunch of circulars, placed on record. Her contention is that the provisional list of eligible candidates/teachers are prepared on the basis of the particulars received by the Department from the District Officers. In case any teacher feels that his/her name has been omitted and considers himself/herself senior to the persons whose names are given in the eligibility lists, then he/she was required to submit an application in the proforma, giving all particulars for due consideration of the respondents. Some of the circulars relied upon by the respondents are the circulars dated 19.5.1975 and 31.8.1979. In these circulars, the procedure, as contended by the respondents, has been laid down which to say the least, does not appear to be satisfactory. It is stated, namely, in the circular dated 19.5.1975 that the tentative eligibility lists of teachers eligible for promotion during the year 1975 to 1976 to the post of PGTs in different subjects have been drawn on the basis of the particulars received from the District Officers. It is also noted that there may be some omissions/discrepancies in the particulars of the eligible persons. Accordingly, the concerned Principals/Heads of the Institutions were requested to bring the contents of the lists and this letter to the notice of all the concerned teachers. It is further provided in the circular that in case the name of a teacher who considers himself senior to the persons whose names are given in the eligibility lists does not appear in the above said lists, or there is any discrepancy in the particulars of any teacher, he may be directed to see the

Administrative Officer, along with his full particulars in the enclosed proforma duly verified by the Principal of the School concerned. It is this proforma that the respondents have been insisting upon which they state was not submitted by the applicant at any time prior to 1982-83. The applicant, however, relies on the particular entry in her Service Book regarding her Post Graduate qualification obtained in 1975 which has been entered by the Principal of the concerned School. When such an authentic document, like the Service Book is available with the respondents/Principal of the concerned School, we fail to understand why the respondents cannot get the necessary particulars from the concerned officials in the first instance and prepare the eligibility lists accordingly. It was mentioned during the hearing that even in the case of Respondent 3, her subsequent promotion as PGT from an earlier date has been cancelled, on the ground that she had only applied for inclusion of her name to the post of PGT on 18.1.1983 and hence, the question of promoting her from 21.11.1979 does not arise. Accordingly, the promotion order regarding the benefit of notional promotion given to Respondent 3 w.e.f. 21.11.1979 which the respondents state has been wrongly given to her vide order dated 18.3.1997, was cancelled and her effective date of promotion to the post of PGT vide order dated 3.9.1983 was restored.

7. The above conditions of first promoting and then cancelling and restoring the earlier date and so on done by the respondents are most unsatisfactory. It not only shows the casual manner in which the respondents are

handling such cases of promotions of their teachers who are working under them but also gives rise to multiplicity of litigations as in the present case. We were informed during the hearing that Respondent No. 3, Mrs. Sushila Kaul has also filed an Original Application in the Tribunal against the latest order passed by the respondents dated 25.7.2000 cancelling the earlier order dated 18.3.1997, which no doubt is the basis of the present litigation.

8. The learned counsel for official respondents has contended that the procedure laid down as above by the circulars has been adopted by the respondents to cope with the large number of teachers working under them. This argument can hardly be accepted as reasonable or tenable because obviously in the first instance they have prepared a tentative eligibility list based on the available records supplied to them by the District Officers/Principals of the concerned Schools and Heads of the Institutions. It is also relevant to mention that the applicant has made several representations to the respondents to bring to their notice her Post Graduate qualification to claim her suitability for being considered for the higher post of PGT. Why the respondents have also ignored the entry in the applicant's Service Book in preparing the tentative eligibility list is, therefore, a question which has not been satisfactorily answered by the respondents.

9. Therefore, in the particular facts of the case, the contention of the respondents that it was only if the applicant had submitted an application in the proforma, as

required under their executive instructions, they would have considered her for promotion is not tenable. In the first instance it was incumbent on the respondents to prepare the provisional/tentative seniority list as carefully as possible to include all eligible candidates. The omission of any eligible candidate should be an exception rather than the rule and we see no reason why this particular Department should adopt method contrary to the procedures adopted by the Government of India or other Departments of Govt. of NCT, Delhi. The contention of the learned counsel for the respondents that it is because of the large number of teachers by itself will not absolve the respondents from doing their duty carefully, legally and in accordance with the relevant rules and instructions for preparation of the seniority list.

10. It will be pertinent to mention here that what the respondents have done with regard to Respondent 3 is firstly, to give her the promotion with retrospective effect from 21.11.1979 vide order dated 18.3.1997 and then on re-examining her case pass the order dated 25.7.2000 to restore her effective date of promotion to the post of PGT made vide order dated 3.9.1983. Such futile exercise should be avoided. Better effort and time could have been spent in trying to prepare the tentative eligibility list in the first instance itself as accurately as possible with all facts and information, available with them. They have themselves stated that the earlier orders have been passed erroneously. In other words, if only the respondents were more careful in the preparation of the tentative

Y/

eligibility lists for promotion to the post of PGTs in respect of different disciplines/subjects, such infructuous litigations can be avoided.

11. The applicant has also been making several representations to which she says she got no reply. However, these representations are stated to be from August, 1997 onwards, as mentioned in her representation dated 21.12.1998 (page 44 of the paper book). Therefore, in the facts and circumstances of the case, we consider it appropriate to dispose of this O.A. with the following directions:

(1) The respondents shall consider the applicant for promotion to the post of PGT, subject to her fulfilment of the eligibility and other conditions as per the relevant rules and instructions. In the circumstances, they shall not insist on the fact that she had not made any separate application in the proforma, as per the executive instructions/circulars issued from time to time as her particulars were available with the respondents in her Service Book from 1975.

(2) If she is so found fit for promotion to the post of PGT from an earlier date to 25.1.1983, taking into account the facts and circumstances of the case, she will be entitled to only notional benefits of promotion like seniority from the date any of her junior was promoted, without any monetary benefits.

No order as to costs.

(Govindan S. Tampli)
Member (A)

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)