

(2)

(12)

Central Administrative Tribunal  
Principal Bench

New Delhi, dated this the 1<sup>st</sup> JANUARY, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

T.A. No. 7 of 1999

Shri P.K. Sharma,  
Section Officer.  
Navodaya Vidyalaya Samiti,  
A-39, Kailash Colony.  
New Delhi-110048. ... Applicant  
(By Advocate: Shri K.B.S. Rajan)

Versus

1. Union of India through  
the Secretary,  
Dept. of Education,  
Ministry of Human Resources Development,  
Shastri Bhawan,  
New Delhi-110001.
2. The Director.  
Navodaya Vidyalaya Samiti,  
(An Autonomous Organisation  
of the Ministry of Human Resources  
Development)  
A-39, Kailash Colony,  
New Delhi-110048. ... Respondents  
(By Advocate: Shri S. Rajappa)

M.A. No. 1682 of 2000  
in  
O.A. No. 2234 of 1999

Shri K. Sivaraman,  
Sr. Personal Assistant.  
Navodaya Vidyalaya Samiti,  
New Delhi. ... Applicant  
(By Advocate: Shri R.K. Singh)

Versus

1. Navodaya Vidyalaya Samiti,  
Through the Director,  
A-39, Kailash Colony,  
New Delhi-110048.
2. Deleted as per order  
dated 20.7.2000 in M.A.
3. Smt. Veena Sharma,  
Sr. P.A.,  
Navodaya Vidyalaya Samiti,  
A-39, Kailash Colony,  
New Delhi-110048. ... Respondents  
(By Advocate: Shri S. Rajappa)

MR. S.R. ADIGE, VC (A)

This common order will dispose of both O.As.

T.A. No. 7 of 1999

2. Applicant challenges his non-consideration for promotion as Assistant Director by the DPC which met on 23.10.98 and seeks a direction to respondents to hold a review DPC for the purpose.

3. It is not denied that as per relevant Recruitment Rules (Annexure 2), 6 years regular service in the grade of Section Officer is an essential qualification for eligibility for consideration for promotion as Assistant Director.

4. Applicant's contention is <sup>1</sup>that he was inducted into respondent organisation as Assistant, and subsequently he was appointed to the post of Section Officer w.e.f. 1.1.91 on deputation basis and w.e.f. 6.6.91 on regular basis.

5. In this connection he relies upon the seniority list of S.Os as on 1.10.97 issued by respondents (Page 22 of the O.A.), which shows him as having been regularly appointed in that grade as on 6.6.91 as also respondents' office order dated 24.7.96 (Annexure 1).

6. However, that order dated 24.7.96 has since been modified by respondents' subsequent order dated 24.3.2000 (copy taken on record), whereby applicant's seniority as S.O. w.e.f. 6.8.91 has been cancelled and his seniority as S.O. has been ordered to be reckoned w.e.f. 23.11.93. We are informed that applicant has subsequently challenged the aforesaid order dated 24.3.2000 in another O.A., which is pending.

7. Meanwhile we have been shown a copy of Delhi High Court order dated 12.10.93 in CWP No. 542/93 filed by applicant (Annexure R1). Para 1 of that order reads thus:

"Admittedly on the date the DPC met, the petitioner had not fulfilled the requisite qualification in as much as they had not put in 6 years as Assistants, even after taking into consideration their service in the previous employment. According to the petitioners they have now (emphasis supplied) completed 6 years during the pendency of the writ petition....."

8. As the writ petition was itself filed in 1993, according to applicant's own showing he would have completed six years regular service as an Assistant some time between 1.1.93 and 12.10.93. To be eligible for consideration for promotion as S.O. in the D.P. held on 23.10.98, he should have been promoted as S.O. on regular basis on or before 23.10.92.

9. He could not have been promoted as a regular S.O. on or before 23.10.92 if as per his own showing between 1.1.93 and 12.10.93 he was still an Assistant.

10. Nothing has been shown to us to suggest that the aforesaid order dated 12.10.93 has been stayed, modified or set aside.

11. The O.A., therefore, warrants no interference.

M.A. No. 1682 of 2000  
in  
O.A. No. 2234 of 1999

12. Applicant who is a Senior Personal Assistant (SPA) had filed O.A. No. 2234/99 seeking a direction to respondents to consider him for promotion as Assistant Director (Administrative) w.e.f. 14.10.98 in the forthcoming DPC, and not to frame any proposed rules till his O.A. was disposed of. Other related and consequential reliefs were also prayed for.

13. On 12.7.2000 the O.A. was permitted to be withdrawn on the prayer made by applicant's counsel for withdrawal of the O.A.

14. Thereafter applicant filed M.A. No. 1682/2000 praying that the order dated 12.7.2000 be recalled on the ground that applicant's counsel had

only prayed for the deletion of Respondent No. 2  
~~from the array of respondents and had incorrectly~~  
~~submitted that applicant sought withdrawal of the~~  
 O.A.

15. That M.A. was disposed of by order dated  
 23.10.2000 in which it was stated that rules did not  
 contemplate revival of an O.A. which had been  
 withdrawn and in the circumstances, applicant was  
 permitted to file a fresh O.A.

16. Thereupon, applicant filed O.A. No.  
 2501/2000 which was heard and summarily dismissed by  
 another Bench on ground of Res Judicata under Section  
 11 C.P.C. by order dated 29.11.2000. In that order  
 it was held that a remedy may be available to  
 applicant by means of M.A. No. 1682/2000 itself in  
 the background of the provision of Rule 24 CAT  
 (Procedure) Rules.

17. In the interests of justice and the special  
 facts and circumstances of this case, we have  
 entertained M.A. No. 1682/2000 and heard both sides  
 on the merits of O.A. No. 2234/99.

18. The RRs for the post of Assistant Director  
 (Admn.) at Annexure R-1 contemplate promotion from  
 amongst Section Officers (other than Finance and  
 Computer) with six years regular service in the  
 grade. Applicant on his own showing is a Senior  
 Personal Assistant. Not being a Section Officer, he  
 is not in the feeder grade for promotion as Assistant  
 Director (Admn.).

19. The O.A., therefore, warrants no interference.

20. Both O.As are, therefore, dismissed. Let copies of this order be placed in both O.A. case records. *No costs*

(Dr. A. Vedavalli)  
Member (J)

(S.R. Adige)  
Vice Chairman (A)

'ok'

Attested

*Have*  
*CO.*