

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1370/96

199

T.A.No.

47

DATE OF DECISION 8-5-2000

Ms. Jai Singh

....Petitioner

Sh. P. P. Khurana with Shri D. R. Advocate for the
Gupta Petitioner(s)

VERSUS

Lt. Govt. of Delhi & Ors

....Respondent

Sh. Vijay Pandita

.... Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri V. K. Majotra, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1370/96

New Delhi this the 8th day of May, 2000.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri V.K. Majotra, Member (A)

Mr Jai Singh

S/O Late Shri Shish Ram,
R/O A-27, Shastri Marg,
Gali No.5, East Mauj Pur,
Delhi-53

.. Applicant

(By Advocate Sh.P.P. Khurana alongwith
Shri D.R. Gupta)

Versus

1. Lt. Governor of Delhi,
Raj Niwas Marg,
Delhi.

2. The Chief Secretary,
Govt. of NCT of Delhi,
Alipur Road, Delhi.

3. The Commissioner-cum-Secretary (Edn.),
Education Department,
Old Secretariat, Govt. of NCT of
Delhi, Alipur Road, Delhi.

4. The Director of Education,
Old Secretariat, Govt. of NCT of
Delhi, Delhi.

5. Union Public Service Commission,
Shahajahan Road, New Delhi (through
its Secretary)

.. Respondents

(By Advocate Shri Vijay Pandita)

O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has filed this application on 19.9.1996 and thereafter amended the OA in which he has claimed a number of reliefs, including setting aside the relieving order issued by the respondents dated 13.8.96 and for a direction to the respondents to convene a review DPC to consider his case for regular promotion to the post of Assistant Director (PE & NI) (hereinafter referred to as AD (PE)), reserved for Scheduled caste officers in respect of a vacancy which had arisen in 1992. The consequential retiral benefits have also been claimed on his retirement

on superannuation on 31.5.1997.

2. We have heard Shri P.P.Khurana, learned counsel for the applicant and Shri Vijay Pandita, learned counsel for the respondents and considered the pleadings and documents on record as well as the departmental records submitted by the respondents.

3. The brief relevant facts of the case are that the applicant was holding the substantive post of Supervisor(PE) (hereinafter referred to as S(PE) under Respondent 4 from 9.12.1983. According to him, under the relevant Recruitment Rules, he was eligible for consideration for promotion to the post of AD(PE) after completion of eight years of regular service as S(PE) on 8.12.1991. He has submitted that a post of AD(PE) fell vacant on 29.2.1992 on retirement of the earlier incumbent of that post on which he could have been considered but this has not been done by the respondents. Another vacancy in the post of AD(PE) fell vacant on 31.10.1995, again on retirement of another incumbent in that post. The applicant states that he has submitted a representation to the respondents to promote him against the regular vacancy of AD(PE) which fell vacant on 29.9.1992 which post was reserved for the SC community and the applicant belongs to that category. By respondents order dated 4.9.92, the applicant was promoted on ad-hoc basis as AD(PE) w.e.f. 4.9.1992 which was extended upto 31.3.1994. In the meantime, the Recruitment Rules for the post of AD(PE) were amended by Notification dated 24.7.95 to provide for inclusion of Inspectors of Schools who had eight years of regular service, apart from the post of S(PE) in the feeder grade.

4. After the amendment of the RRs, the respondents had initiated the process for filling up the post of AD(PE) and had referred the matter to UPSC on 11.9.95, requesting them to convene a meeting of the DPC to fill up the aforesaid vacancies. Shri P.P.Khurana, learned counsel has drawn our

attention to the letter sent by the UPSC to the respondents dated 27.11.1995 (Annexure A-6). In this letter, it has been mentioned, inter alia, that one vacancy of AD(PE) relates to the financial year 1991-92 (29.2.1992) and the other relates to 1995-96 (31.10.1995). It has also been stated that out of these, one vacancy is reserved for SC and the other is an unreserved vacancy. The UPSC had observed that for the vacancy for 1991-92, S(PE) who had completed eight years regular service on 30.11.1991 were to be considered. It has also been stated that as such there ^{no} ~~were~~ eligible candidates for consideration against the vacancy of 1991-92, and the vacancy will, therefore, have to be carried over to 1992-93. Then the two officers belonging to SC community, namely, S/Shri Jai Singh (Applicant) and Satish Sonkar were to be considered for the reserved vacancy. They have also stated that in so far as the other vacancy of 1995-96 is concerned, the same has to be dealt with under the Rules which have been notified on 24.7.1995. Accordingly the UPSC had asked the respondents to revise their proposal suitably and send them the relevant documents as mentioned in the letter dated 27.11.1995. The UPSC further reiterated their views to the respondents in their letter dated 27.2.1997. They have stated that following the decision of the Supreme Court in Y.V. Rangaiah and Ors. Vs. UOI & Ors (SLR 1983(1) SC 789) the vacancy which had arisen prior to the amendment of the Rules is to be filled up as per the old RRs and not by the new RRs. This proposition of law is in accordance with the judgement of the Apex Court in Y.V. Rangaiah's case (Supra). The respondents have submitted that further to the letters of the UPSC referred to above, they had taken necessary action for regular promotion against the vacancies for the posts of AD(PE).

5. Admittedly, the applicant was promoted on ad hoc basis as AD(PE) w.e.f. 4.9.1992 initially for a period of six months or till the post was filled on regular basis whichever was earlier. The respondents have submitted that the competent

authority did not recommend continuance of the applicant's ad hoc promotion after 3.3.94 and according to them he had to revert to his substantive post of S(PE) after this date. They have also referred to the reply to the unamended OA. Shri Pandita, learned counsel had emphasised on the fact that as the competent authority had not recommended continuance of the ad hoc appointment of the applicant as AD(PE) w.e.f. 3.3.94, as such he has to come back to his substantive post of S(PE). However, according to him, since the applicant was himself the Drawing and Disbursing Officer w.e.f. 3.3.1994 to 17.8.1994 he continued to draw his salary as AD(PE) without any extension of his ad hoc period beyond 3.3.1994. A specific query was made to the learned counsel for the respondents as to why the decision of the competent authority not to recommend the continuance of the applicant on ad hoc basis beyond 3.3.94, was not given in writing by way of an order. We did not receive any satisfactory explanation to this or was any order shown to us or placed on record prior to the order dated 13.8.1996, relieving the applicant from the same date with a direction to report for duty to the Deputy Director of Education(Annexure 1). Prior to this relieving order dated 13.8.1996, the respondents had also issued order dated 12.7.96(Annexure A-8) in which it has been stated that the applicant should be paid salary for his substantive post i.e. S(PE) w.e.f. 1.8.95 till further orders. The copy of this order has been marked to the applicant but in view of the relieving order dated 13.8.96, Shri Khurana, learned counsel for the applicant has submitted that till that date the applicant had continued to work as AD(PE) and is, therefore, entitled to pay and allowances of the higher post.

6. Having regard to the above facts, the contention of the respondents that as the competent authority had not recommended extension of his ad hoc promotion as AD(PE) after 3.3.1994, the applicant cannot be paid the salary in the higher post from that date cannot be accepted because no order has been

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shown to us which has been issued by them relieving/reverting him to his substantive post w.e.f. 3.3.94 itself. At the same time we see force in the contention of the learned counsel for the respondents that by order dated 12.7.1996 the respondents had directed that the applicant should be paid his salary only in his substantive post of S(PE) till further orders. In the relieving order dated 13.8.96, the applicant has also been referred to as S(PE) and had been relieved from his duties w.e.f. 13.8.96 with a direction to report for duty to the Deputy Director of Education. 52

7. Taking into account the facts and circumstances of the case and the relieving order on record relied upon by the applicant himself, the contention of the applicant that he should be paid the pay and allowance in the higher post of AD(PE) till 13.8.96 is rejected. He will, however, be entitled to be paid pay in the post of AD(PE) till 12.7.96 and thereafter in his substantive post of S(PE). His further contention that the relieving order dated 13.8.96 is illegal and without any authority is without any merit as the applicant as S(PE) was relieved from his duties from that date with a direction to report for duty to DDE. As we do not find any illegality in this order, the prayer for quashing the relieving order dated 13.8.96 is also rejected.

8. The respondents have submitted the relevant promotion/DPC files which were also referred to during the hearing. Shri Pandita, learned counsel, relying on the order of the Tribunal in Harpal Singh and Ors. Vs. NCT of Delhi and Ors (OA 1816/95) decided on 12.1.1996, (copy placed on record), had submitted that the process of selection cannot be deemed to have commenced automatically from the date a post fell vacant and it is also open to the Govt. to fill the post or not. He had contended that the applicant, along with other eligible officers had been duly considered by the DPC which was subsequently held on 22.2.2000 for the vacancy position 18

in the year 1995-96. The Committee had after making their assessments recommended a panel of four officers, including the applicant(SC) for promotion to the grade of AD(PE) in the Dte.of Education. Learned counsel for the respondents has submitted that by the time the recommendation of the DPC was received the applicant had superannuated from service w.e.f. 31.5.1997 and, hence he could not be promoted to the post of AD(PE). The respondents have, therefore, submitted that as the DPC has been held in which the applicant had been considered for regular promotion but could not be promoted as he had already retired from service, nothing further survives in this O.A. They have also submitted that the retiral benefits and other dues have been paid to the applicant, and nothing further was pressed on this account by the applican's counsel, excepting revision of pensionary benefits.

9. From the minutes of the DPC held on 22.2.2000, it is seen that the Committee had assessed four candidates, including the applicant for promotion to the grade of AD(PE) and he was also recommended for selection. It is seen that the vacancy position considered is for the year 1995-96 and nothing has been placed on record to show that the respondents had taken a decision not to fill the earlier vacancy of AD(PE). This was also not their case at the hearing. In fact it is seen from the above referred to letters of UPSC, that the proposals for filling the vacancy of 1991-92 was referred to them. However, the respondents have not produced the DPC Meeting minutes regarding consideration of the vacancy of the year 1991-92, which according to the UPSC letter dated 27.11.1995 was to be carried over to the year 1992-93, as no SC officer was eligible then. This vacancy had to be considered in terms of the unamended Recruitment Rules i.e. prior to the Notification dated 24.7.95. As the applicant had only retired from service on 31.5.1997, he was entitled to be

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considered for promotion in the vacancy that arose in 1992-93.

10. In the result, for the reasons given above the OA succeeds and is allowed with the following directions:-

- (i) The respondents are directed to take action to hold a DPC Meeting to consider the eligible candidates, including the applicant for the vacant post of AD(PE) reserved for SC candidates for the carried forward year 1992-93;
- (ii) The above action shall be taken within three months of the receipt of a copy of this order;
- (iii) In case the DPC recommends the applicant for promotion, he shall be entitled to all consequential benefits, including revision of pensionary benefits, in accordance with law;
- (iv) In the circumstances of the case, cost of Rs.1000/- (Rupees one thousand) is given against the respondents and in favour of the applicant.

V.K. Majotra

(V.K.Majotra)
Member (A)

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Member (J)

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