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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2561 of 2000

New Delhi, this the 8th day of October, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Baljor Singh
1090, Gram Sabha Pootkalan,
Delhi-110 041.

-APPLICANT

(By Advocate: Dr.M.P. Raju)

Versus

1. NCT of Delhi
through the Director of Education,
Old Secretariat,
Delhi.
2. Dy. Director of Education,
NCT of Delhi,
Establishment Branch-II,
Old Secretariat, Delhi.

-RESPONDENTS

(By Advocate: Shri Mohit Madan, proxy counsel for
Mrs. Avnish Ahlawat)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (JUDL)

The applicant in this case is aggrieved of a memorandum issued to him by the department which is stated to be illegal, arbitrary and discriminatory. The department has issued this Memorandum to the applicant whereby the applicant had been called upon to show cause as to why his orders of promotion be not cancelled and in case nothing reaches them within 10 days it shall be presumed that he has nothing to say in the matter and the case will be decided on merits.

2. Facts in brief are that the applicant appeared for selection and appointment as TGT (Hindi) when he was called for selection through Employment Exchange and was duly selected as per panel prepared on 12.8.83. However, the applicant and certain other persons who were

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allegedly similarly placed were not given appointment. The matter went upto the Supreme Court and it is submitted that vide the judgment of the Hon'ble Supreme Court as per Annexure A-2 the respondents were directed to exhaust the panel which was prepared on 12.8.83, so accordingly the applicant came to be appointed as he had been selected in the panel of 12.8.83. However, he was given actual appointment in the month of August, 1989.

3. Applicant further submits that in July, 2000 an order of his promotion and similarly other placed colleagues was issued as per Annexure-VIII and applicant was given promotion.

4. It is further submitted that vide order dated 22.9.2000 the applicant was asked to submit relevant documents for joining and some of the vested interest in the Department of Education attempted to stop the promotion of the applicant and raised a issue claiming that the applicant had joined on 19.9.1989 and not on 12.8.83, so his promotion was attempted to be stopped and it is the result of that, that the impugned memo dated 10.11.2000 had been issued whereby the department has taken a decision to revert the applicant. It is also submitted that the proposed reversion of the applicant is mala fide, illegal and is in violation of Article 14 and 16 of the Constitution of India.

5. It is further stated that the applicant's length of service was calculated taking his joining as 12.8.83 in compliance with the directions of the Hon'ble

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Supreme Court, so the applicant cannot be treated as if he had joined on 19.9.1989 as such the applicant cannot be reverted.

6. The respondents are contesting the OA. The respondents admit that the applicant had joined the department against the panel prepared on 12.8.83. They also stated that as per the directions given by the Hon'ble Supreme Court the applicant is entitled to the seniority as per the panel prepared on 12.8.83. and the date of joining in the year 19.9.1989 is not material for the purposes of promotion.

7. However, the respondents allege that when the applicant was given promotion his date of appointment was considered as 12.8.73 instead of 12.8.83 and in the DPC note which met on 30.6.2000 the applicant was shown as 1973 appointee instead of 12.8.83 and when the promotion was given to the applicant immediately representations were received from the persons senior to him alleging that applicant is an appointee of 12.8.83 and is at S.No.395 in the seniority list of Language Teacher whereas the representationists, who were senior to the applicant have not been promoted.

8. It is further stated that in pursuance of the orders of the Hon'ble Supreme Court 51 persons were appointed and in the inter-se seniority of those 51 persons, applicant was quite junior to them and since the mistake has revealed now that is why the impugned memo has been issued.

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9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The short question before us is whether the applicant on his own seniority is entitled to be promoted and if not so, then whether can he be reverted or not, as proposed by the department vide Annexure-1.

11. The learned counsel for the applicant has taken us through record and submitted that applicant was appointed in terms of the order of the Hon'ble Supreme Court and to that extent he has shown us the judgment of the Hon'ble Supreme Court also.

12. He further submitted that applicant and others had also filed another OA 1691/94 where the directions were given to the respondents to prepare a seniority list. Vide Annexure-IX he was given promotion but his date of appointment as TGT teacher is shown as 12.8.83 so it was contended that there was no dispute about his promotion and it is erroneous on the part of the respondents to show that his promotion was considered as if he was an appointee of 1973 so he states that the applicant cannot be reverted back to the post of TGT.

13. The counsel for the respondents contended that the panel which was prepared and declared as on 12.8.83 is at Annexure R-IV. According to this, initially 18 candidates belonging to SC were empanelled and after the judgment of the Hon'ble Supreme Court candidates belonging to SC and ST were also added which are shown in the panel from entry No.19 to 57 and this panel had been

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prepared strictly in accordance with the marks obtained by the candidates. The name of the applicant is at S.No.42 in the panel which is at page 30 of the counter-affidavit which shows that the name of the applicant was much junior than his other colleagues. So even if the applicant is treated as having been appointed on 12.8.83, then also he is much junior and could not have been given promotion in the DPC held on 30.6.2000 and since the promotion has been given erroneously, that mistake is sought to be rectified.

14. From the rival contention of the parties, it is clear and undisputed that the date of joining of the applicant as TGT in the department is 12.8.83 so now the only question arises whether the DPC had correctly considered him and recommended him for promotion which had met on 30.6.2000. According to the respondents when the DPC met, the date of the appointment of the applicant was shown as 12.8.73 instead of 12.8.83. The counsel for the respondents also submitted that the name of the applicant appears at S.No.395 in the seniority list and the last candidate considered for promotion was Om Parkash who is a TGT, Hindi (SC) whose name in the seniority list was at S.No.354 and none of the junior to the applicant belonging to SC category has been given promotion in the said DPC. Since the applicant was much below in the seniority list, which fact has not been considered and examined by the DPC, so the applicant has to be reverted.


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15. On the contrary the counsel for the applicant submitted that the order of promotion reads as if the same has been passed subject of finalisation of the seniority list and it is submitted that since the seniority list has not been finalised so applicant has been rightly promoted and cannot be reverted back unless the seniority list is finalised.

16. We have considered this aspect also.

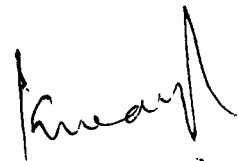
17. The respondents have also placed on record a tentative eligibility list for promotion to the post of Lecturer and we find that the name of the applicant has been inserted as 26A and has been shown as S.No.395 and the name of Om Parkash, who is also a SC candidate has been given promotion is at S.No.354. This is quite manifest from this tentative seniority list that the applicant is at much lower stage in the seniority list though he has been shown in the tentative eligibility list but since the respondents had issued a impugned memo calling upon the applicant to show cause that as to why his promotion should not be reverted back so we find that the respondents can go ahead to give effect to the impugned memo after receiving the reply of the applicant.

18. We are also of the view that since the applicant is stated to be much junior to the persons who was given promotion and it may be that the applicant had been given promotion erroneously, so the department can rectify that mistake.



19. In view of the above discussion, we find that the OA has no merits and the same is dismissed. The respondents are at liberty to proceed with the memo issued by them in accordance with the law and instructions on the subject. However, in this process they will also ensure that none of the juniors to the applicant stands promoted without considering the applicant. No costs.


(S.A.T. RIZVI)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL)

Rakesh