

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(8)

1. OA No. 528/1988

DATE OF DECISION: 27.6.1991

SHRI SHIV RATTAN GUPTA

APPLICANT

VERSUS

DIRECTOR OF EDUCATION
DELHI & OTHERS

RESPONDENTS

2. OA No. 1018/88

SHRI JANKI DAS GUPTA & ORS. APPLICANTS

VERSUS

DIRECTOR OF EDUCATION,
DELHI & OTHERS

RESPONDENTS

CORAM:

THE HON'BLE MR. B.S. SEKHON, VICE-CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *X*
4. Whether it needs to be circulated to other Benches of the Tribunal? *X*

I.K. Rasgotra
(I.K. Rasgotra)
Member (A)

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FOR THE APPLICANT

IN PERSON

FOR THE RESPONDENTS

MRS. AVNISH AHLAWAT AND

SHRI SHRI M.R. BHARDWAJ,

COUNSEL.

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FOR THE APPLICANTS

SHRI P. SAHAI, COUNSEL

FOR THE RESPONDENTS

SHRI JAGDISH VATS AND

SHRI M.R. BHARDWAJ, COUNSEL.

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A))

Shri Shiv Rattan Gupta, Vice Principal in a school under Delhi Administration has filed this application (OA-528/88) under Section 19 of the Administrative Tribunals Act, 1985, challenging the seniority list of the Vice Principals, issued by the respondents on 21.10.1987 and 18.2.1988. The Tribunal vide its order dated 10.1.1991 in MP-53/91 had decided to club OA-1018/88 alongwith the present OA, as the issues of law and fact raised in the two applications are identical. Accordingly, we propose to deal with them through this common judgement.

2. Shri Shiv Rattan Gupta, applicant in OA-528/88 joined service in Delhi Administration as Trained Graduate Teacher (TGT) on 5.3.1955. He was promoted as Post Graduate Teacher (PGT) on 10.8.1961 and Vice Principal on 10.3.1983, which post he has been holding since then. A number of Scheduled Castes (SC) and Scheduled Tribes (ST) candidates also joined Delhi Administration as TGTs who were later promoted as PGTs. There were also some Headmasters of middle school and Post Graduate Teachers placed in a special cadre in the Delhi Administration. The teachers are categorised as under in the Directorate of Education, Delhi Administration:-

Grade/Post	Group to which belongs	Scale of pay pre-revised	revised w.e.f.
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1.1.1986

1. Trained Graduate Teacher (TGT) or equivalent	C	440-750	1400-2600
2. Post Graduate Teacher (PGT)/Head- masters/PGT (Spl. Cadre)	C	550-900	1640-2900
3. Vice Principals	B	650-1200	2000-3500
4. Principals	A	1100-1600	3000-4500

3. The case of the applicant is that separate lists were maintained for general category teachers and those belonging to SC/ST in TGT and PGT grades. The respondents have since prepared a combined list of general categories and SC/ST Vice Principals and issued the same vide memorandum dated 21st October, 1987 (Annexure A-2), as the final seniority list of Vice Principals. The said memorandum states that:-

"a tentative seniority list of Vice Principals, male and female working under the Directorate of Education, Delhi Administration, Delhi had been

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circulated vide memorandum of even number dated 11th November, 1986 and objections invited. After considering the objections received during the stipulated time the final seniority list of Vice Principals is being circulated after the approval of the competent authority. This seniority is subject to the various cases pending in Hon'ble High Court/Central Administrative Tribunal."

The applicant however disputes that any tentative seniority list of Vice Principals was ever circulated by the respondents to give them a chance to submit their objections, if any. He further submits that the PGTs belonging to SC/ST recruited/promoted in 1968 have been illegally promoted Vice Principals in contravention of the instructions issued by the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms and that the Vice Principals recruited/promoted from SC category have been shown senior to the applicant in the said list. Further the seniority list does not indicate the date of promotion as Vice Principals nor does it show whether the Vice Principals are departmental promotees or direct recruits as PGT. Again the Headmasters and the PGTs constituting special cadre promoted as Vice Principals in 1983 have been shown senior to the applicant and lastly the concept of zone of consideration has not been followed by the respondents, while considering/promoting junior SC/ST Vice Principal as Principals.

He further submits that the rules for promotion by seniority subject to fitness have been so twisted by the respondents as to suit their evil designs for giving undue benefits to SC/ST, not envisaged in the Constitution of India. In brief the grievance of the applicant is that junior SC/ST Vice Principals have been shown senior to him in the impugned seniority list and that the combined seniority list of is arbitrary and since it deprives the applicant/his right to

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further promotion it is violative of Article 14 of the Constitution of India.

By way of relief the applicant has prayed that the seniority list of Vice Principals dated 20.1.1987 and 18.2.1988 be set aside and promotions of illegally promoted Vice Principals to the post of Principal vide order dated 14.3.1988 be cancelled or revised so as to exclude SC/ST.

4. OA-1018/88 has been filed by Shri Janki Das Gupta and 29 other Vice Principals jointly under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the seniority assigned to them below 71 Vice Principals belonging to SC/ST community who are said to be junior to them. The applicants beside impleading the three official respondents have also impleaded 71 other (respondents 4-74) who have stolen march over them and would be affected adversely if the applications are allowed.

By way of relief the applicants herein have prayed that the respondents be directed to revise the seniority list of Vice Principals by excluding SC/ST candidates from it.

5. The stand of the respondents, as reflected in the written statement is that the candidates belonging to SC/ST were promoted as Vice Principals earlier than the applicants, as they belong to the reserved categories and accordingly have been shown senior to the applicants as Vice Principals. They further submit that in the PGT cadre the seniority of SC/ST has not been finalised and the promotions have been made from PGT to Vice Principal on the basis of service particulars provided by the PGT Cell in respect of SC/ST candidates. In accordance with the above, the seniority list of the Vice Principals has been prepared on the basis of selection made by the DPC and the vacancies have been filled, keeping in view the instructions of the Government of India, issued from time to time in connection with filling up the post by SC/ST candidates. Regarding the zone of consideration the respondents have submitted that in accordance with the provisions of Recruitment Rules, promotion to the posts of

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Vice Principal is made from the seniority list of PGTs, Headmasters and PGTs of special cadre in the ratio fixed by the department in respect of each cadre from time to time. The seniority of Vice Principals is fixed accordingly. The applicant has been assigned seniority as PGT at srl. No.372 which position he had challenged in Delhi High Court in CW-42/43 - Shri Shiv Rattan Gupta vs. Director of Education, Delhi & Others. This writ petition was dismissed by the Delhi High Court on 5.5.1983 when the Hon'ble High Court confirmed the seniority position assigned to the applicant as PGT at srl. No.372. The respondents also affirm that the tentative seniority list of Vice Principals was circulated vide letter dated 14.12.1987 and final seniority list was circulated vide letter dated 18.2.1988. There is no question of keeping the seniority list as secret as all such seniority lists are circulated, objections received and decided on merits before issuing the final seniority list. Further the Vice Principals were regularised in the year 1980 as per the list prepared in accordance with the merit assigned by DPC for regularisation of Vice Principals. They further aver that the applicants have not specifically pointed out any rule which has been flouted by the respondents in ordering promotion.

6. Respondent No.7 Shri D.R. Nim (OA-1018/88) has submitted that the applicants have only challenged the order of promotion dated 14.3.1988 (page 21 of the paper book) promoting Vice Principals to the post of Principal. It is, therefore, wrong to suggest that the seniority list of Vice Principals should be revised by the respondents Nos. 1-3 and respondents Nos.4-74 belonging to SC/ST excluded therefrom.

7. Respondents Nos.4-74, (in OA-1018/88) excluding respondent No.7 in their counter affidavit have submitted that they were recruited as PGTs under the Delhi Administration between 1962 and 1974. They were promoted as Vice Principals by the respondents during the period 1976 to 1983. They therefore take their seniority from the date of promotion as Vice Principals. According to them the application is debarred under Section 21 of the Administrative

Tribunals Act, 1985, as the cause of action arose during 1976 to 1983. They further submit that relief No.2 prayed for by the applicants that respondents No.4-74 be reverted to the posts of PGT also cannot be granted for the same reasons, as the application itself is hopelessly time barred. Their promotions as Vice Principals were ordered as under:-

<u>Year of promotion</u>	<u>Number of SC officers promoted (approximately)</u>
1976	5
1977	9
1979	32
1980	7
1982	4
1983	<u>15</u>
Total:	<u>72</u>

Accordingly the names of the SC PGTs who were promoted against the vacancies reserved for them have been rightly shown in the seniority list of Vice Principals issued by respondents No. 1 to 3. The promotions of respondents 4 to 74 made during the period 1976-1983 were well within the knowledge of the applicants. However, the applicants neither made any representation to respondents No.1 to 3 nor did they challenge the same in any other forum. They further submit that the relief sought by the applicants that the names of the answering respondents be deleted from the seniority list of Vice Principals issued on 21.10.1987 in effect amounts to challenging the promotions of respondents No. 4 to 74. The challenge to the so called impugned seniority list of Vice Principals dated 21.10.1987 is only a smoke screen to escape from the provisions of Section 21 of the Administrative Tribunals Act, 1985. They further submit that under the Recruitment Rules, notified in 1977, the posts of TGT are filled by direct recruitment and the posts of PGT are filled 75% by promotion and 25% by direct recruitment. The posts

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of Vice Principals are filled 100% by promotion from the grade of PGT. The posts of Principal are filled 50% by promotion from the grade of Vice Principals and 50% by direct recruitment. The conditions of eligibility for promotion are PGTs/Headmaster of Adult School/Vice Principals with 5 years' service. Eventhough $22\frac{1}{2}\%$ of the posts of TGT and PGT were reserved for the SC, for over 17 years, no efforts were ever made by respondents No. 1-3 to fill the reserved vacancies by appointing SC candidates between 1951 and 1967. This resulted in the general candidates usurping 1125 reserved posts of PGTs. It was only in 1968 that 12 SC candidates were recruited to the grade of PGT for the first time. The result was that the respondents became very junior to the general category PGTs, including the applicants, who had illegally been appointed against the vacancies reserved for the SC. In the meantime, the orders providing reservation for SC and ST in posts filled by promotion by selction to Class II, within Class II and upto the lowest rung of Class I were issued by the Government of India, Department of Personnel OM No.10/41/73-Estt.(SCT) dated 20th July, 1974. By virtue of the said orders reservation for SC/ST became applicable for promotion to the posts of Vice-Principal (Class II) from the grade of PGT (Class III) and to the posts of Principals (lowest rung of Class I) from the grade of Vice Principal. Under the above policy 67 officers were promoted as Vice Principals and 4 as Principals upto 1983. However, this also was discontinued from December, 1983. The respondents Nos. 4-74 are aggrieved as the representation of the SC in all the grades, including Vice Principals is far below the prescribed mark and surprisingly there is not even a single SC/ST Vice Principal or Principal from among those promoted after June, 1983 as the official respondents have restricted the zone to going down upto five times the number of vacancies only. They dispute the policy followed by the official respondents and have labelled it arbitrary having no nexus with the object underlying the reservation for SC/ST. They further

submit that the demand of the applicants to demote the respondents No.4-74 is the result of misunderstanding of the instructions of the Government of India from time to time regarding reservation in public posts and services for SC/ST.

8. The applicants have filed the rejoinder in which they have submitted that the respondents have not maintained the 40 point roster to determine the exact number of reserved vacancies. Out of 80 vacancies filled in 1979, 23 were filled by SC PGTs by lifting their names enmass from the separately maintained seniority list, eventhough none of them came within the zone of consideration. According to the applicants after considering the SC candidates separately, according to relaxed standard their names should have been included at the points earmarked for reserved vacancies instead their names appeared enmass in the seniority list. The zone of consideration was totally ignored, as no possible zone of consideration could exclude the applicant Shri S.R. Gupta, who is a PGT of 1961 and include PGTs of 1968 onwards show at srl. No.123 onwards in the impugned seniority list. The reserved posts were not dereserved when SC candidates were not available from the feeder cadre. Adhoc promotions against the vacancies which were to continue indefinitely were made in contravention of the Department of Personnel and Administrative Reforms OM No.15034/2/76-Estt.(D) dated 15.7.1976.

Apparently the official respondents have resorted to carry forward principle in contravention of the instructions of Department of Personnel dated 20.7.1974. Otherwise they could not have promoted 29 SC persons against 15% posts reserved for them in 1979.

9. The applicant Shri Shiv Rattan Gupta in OA-528/88 appeared in person while Shri P.Sahai, counsel appeared for the applicants in OA-1018/88. Shri M.R. Bhardwaj counsel appeared for the respondents No.4-74 in both the OAs, while Mrs. Avnish Ahlawat counsel appeared for respondents Nos.1-3

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in OA-528/88 while Shri Jagdish Vats, counsel appeared for the respondents No.1-3 in OA-1018/88.

10. Shri M.R. Bhardwaj, the learned counsel for respondents No.4-74 submitted that Deptt. of Personnel and A.R. OM No.36011/14/83-Estt.(SCT) dated 30.9.1983 (page 133 of Swamy's Compilation on Reservations and Concessions for SC/ST) stipulates:-

"that the Scheduled Castes/Scheduled Tribes candidates who are within the number of actual vacancies should be considered in accordance with their general seniority on the principle of seniority-cum-fitness and if they are not adjudged unfit, they should all be promoted on ad hoc basis. If, however, the number of Scheduled Castes/Scheduled Tribes candidates found fit within the range of actual vacancies is less than the number of vacancies identified as falling to their share, then additional Scheduled Castes/Scheduled Tribes candidates to the extent required should be located by going down the seniority list but within 5 times the number of vacancies being filled on a particular occasion, subject, of course, to their eligibility and fitness."

In other words, when adequate number of SC/ST candidates are not available additional SC/ST candidates to the extent required can be located by going down the seniority list but within five times the number of vacancies being filled. No such limit was stipulated prior to 1983 for adhoc promotion for SC/ST.

Continuing the learned counsel stated that in accordance with the instructions contained in OM No.1/12/67-Estt.(C) dated 11.7.1968 (page 60 of Swamy's Compilation on Reservations and Concessions for SC/ST):-

"B. Promotion by selection method:

(a) Classes I and II appointments:

Superseded. See order 19.

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(b) Classes II and IV appointments:

There will be reservation at 15% and $7\frac{1}{2}\%$ of the vacancies for Scheduled Castes and Scheduled Tribes respectively in promotions made by selection in or to Classes III and IV posts, in grades or services in which the element of direct recruitment, if any, does not exceed $66\frac{2}{3}\%*$.

Select Lists of Scheduled Castes/Scheduled Tribes officers should be drawn up separately to fill the reserved vacancies as at present; officers belonging to these classes will be adjudged separately and not alongwith other officers; and if they are fit for promotion, they should be included in the list irrespective of their merit as compared to other officers. Promotions against reserved vacancies will continue to be subject to the candidates satisfying the prescribed minimum standards."(*Now 75%--See Order 16).

The learned counsel also submitted that challenge to the seniority list of 21.10.1987 and 18.2.1988 is irrelevant as the relief claimed is against respondents Nos.4-74 who were promoted as Vice Principals during the period 1976 to 1983.

11. We have heard the applicant in person and the learned counsel Shri P. Sahai (OA-1088/88), Mrs. Avnish Ahlawat and Shri Jagdish Vats and Shri M.R. Bhardwaj, the learned counsel for respective parties and perused the records and the material produced before us. The applicant in OA-528/88 has in the written arguments submitted that he:-

- i) joined as TGT on 5.3.1955;
- ii) promoted PGT on 10.8.1961
- iii) Promoted Vice Principal on or after 9.3.1983 and continued upto 19.5.1990.

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iv) Promoted Principal and worked as such upto 30.11.1990 when he retired on superannuation.

It is obvious that he is agitating his grievance belatedly, as the basic grievance ^{had} arisen from the date of promotion as Vice Principal. He has no case for agitating against seniority at this point of time when he has already retired on superannuation in November, 1990. The root cause of the malady according to the applicants is adhoc promotions which are allowed to continue for 10-12 years after which the seniority list of adhoc promotees is prepared. From adhoc promotions in lower grades further adhoc promotions are made in the higher grades. Where, however, the seniority list etc. remain challenged in the courts or there are other insurmountable problems, there is no alternative for the respondents but to resort to adhoc promotions in public interest. Further out of 80 vacancies filled in 1979, 23 were filled by SC resulting in the senior PGTs of 1961 ^{being} "including the applicant" in OA-528/88 were/ignored while junior PGTs of 1968 who belonged to SC were promoted as Vice Principal. It would thus be apparent that the cause of the grievance for the applicant, Shri Gupta arose when promotions made to the grade of Vice Principal were made in 1979, when he was excluded from the zone of consideration. In OA-1018/88 as pointed out by Shri Bhardwaj, the learned counsel for the respondents 4-74 the grievance is not against the seniority promotion of list but against the/ respondents Nos. 4-74 who had been promoted as Vice Principal earlier than the applicants. Most of them were regularised in 1980 as averred by the official respondents. As observed earlier, the zone of consideration in the case of SC candidates can be extended for regularisation of SC/ST candidates if adequate number of SC/ST candidates is not available to fill up the number of vacancies identified, as falling to their share upto 5 times the number of vacancies that the restriction on the zone upto

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five times the number of vacancies also applies to adhoc promotions was clarified by Department of Personnel vide OM NO.36011/14/83-Est.(SCT) dated 30.9.1983 only. In the meantime the respondents had construed that the said restriction on the extended zone applied only to regular promotions. It is observed that since June, 1983 the official respondents have not promoted SC/ST PGTs as Vice Principal extending the zone beyond five times the number of vacancies even for adhoc promotion. There is, however, no doubt that the applicants are aggrieved by the promotion of the SC candidates arrayed as respondents No. 4 to 74 during the year between 1976 to 1983. Most of those who were promoted on adhoc basis were also later regularised in 1980. The cause of grievance, therefore, for the applicants arose starting from 1976 to 1983 when they were ignored and the respondents 4-74 / promoted as Vice Principals between 1976-1983. Again when in 1980 adhoc promotees were regularised, the applicants had the opportunity to agitate the issue after making suitable representations in an appropriate forum. They failed to do so. Projecting the issues of promotions of the SC/ST candidates which took place as far back as during 1976 to 1983 at this point of time under the garb of challenging provisional seniority list of 1987 and final seniority list of 1988 is highly belated and is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. In the case of **S.S. Rathore vs. State SC. of M.P. AIR 1990/10** their Lordships of the Supreme Court have observed that:-

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six

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months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."

In the circumstances of the case we are not inclined to reopen the long settled issues at this belated stage, as the cause of action arose when promotion of Vice Principals were made and not when impugned seniority list was issued. Accordingly, both the OAs. Nos. 528/88 and 1018/88 are dismissed, as barred by limitation.

There will be no order as to costs.

Sukhpal
(I.K. RASGOTRA)
MEMBER (A)

27/6/91

B. S. Sekhon
(B.S. SEKHON)
VICE-CHAIRMAN

Pronounced by me in the open court on 27.6.1991.

Sukhpal
(I.K. Rasgotra)
Member (A)
27.6.1991