

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 105/1988
T.A. No.

199

DATE OF DECISION 27.5.1991


<u>Shri P.S. Grewal</u>	Petitioner
<u>Shri R.K. Kamal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>None</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

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


(AMITAV BANERJI)
CHAIRMAN
27.5.1991

12

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No. 105/1988. Date of decision: 27.5.1991

Shri P.S. Grewal ... Applicant.

Vs.

Union of India & Ors. ... Respondents.

CORAM

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

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

For the applicant ... Shri R.K.Kamal, counsel.

For the respondents ... None.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

The applicant who was working as Audio-Visual Officer (AVO) in the Directorate of Education, Adult Education Branch, Delhi Administration is aggrieved by the final seniority list issued by the (Annexure A-1). above Directorate. He filed the present O.A. on 14.1.1988. He has prayed that the respondents be directed to include his name in the final seniority list of Vice-Principals and assign him the suitable place on the basis of the length of his service in the equivalent grade and, secondly; a direction be issued to the respondents to grant him all consequential monetary, promotional and other benefits with retrospective effect.

The relevant facts are as follows:

23

The applicant being aggrieved by the final seniority list of Vice-Principals appointed between 3.8.1965 and 3.12.1980 filed OA 432/1987 before this Tribunal. He had prayed therein that a direction be issued to the respondents to consider the representation to be filed by the applicant before issuing the final seniority list of Vice-Principals. The final seniority list of Vice-Principals appointed between 3.8.1965 and 3.12.1980 was issued on 21.10.1987 without considering the representation of the applicant dated 4.6.1987. A copy of the representation submitted by the applicant is marked as Annexure A-3 to the O.A. It was received by the Delhi Administration on 6.8.1987. He was, therefore, compelled to file the present O.A.

The applicant joined the Education Department on 10.9.1963 as A.V.O. in the grade of Rs.325-575. The post of A.V.O. was declared to be equivalent to that of the post of Head Master in the same grade of Rs.325-575 by the Director of Education- vide letter dated 24.1.1963 (Annexure A-5). Later on, the posts of Head Masters were converted into those of Vice-Principals in the same grade.

The Union Public Service Commission (U.P.S.C) issued an advertisement for the recruitment to the post of A.V.O. on 3.11.1962 (Annexure A-7). The advertisement showed that the post was reserved for S.T. candidates. It could be treated as unreserved

only if no such suitable candidate was available (Annexure A-8). On the recommendation of the Delhi Administration, the Ministry of Education and Social Welfare, Govt. of India vide letter dated 29.6.1972 equated the post of A.V.O. interchangeable with the posts of Vice-Principals, revised the scale of the post of A.V.O. to 350-650 from 21.12.1967 and Rs.400-800 from 27.6.1970. A D.P.C. was held under the Chairmanship of the Chief Secretary, Delhi Administration and it recommended that the post of A.V.O. be clubbed with that of Vice-Principal. The D.P.C. recommendation was accepted and implemented by Delhi Administration. The applicant was accordingly appointed as Vice-Principal under the Directorate of Education, Delhi Administration and he actually worked as Vice-Principal from 1.10.1970 to 31.1.1972. During this period one Shri Girdhar Gopal (shown at Sl.No.6 of the seniority list) worked as AVO as recommended by the D.P.C. The applicant was shown against the post of Vice-Principal from 16.3.1984 to 19.3.1984 (Annexure A-11). The applicant proceeded on deputation as Research-cum-Academic Officer in the Principal's grade Rs.1100-1600 on 4.8.1980 and his place was taken by one Shri Vyas Deo who worked as A.V.O. from 4.8.1980 until the applicant joined back as A.V.O. with effect from 1.7.1985. The applicant made a request for fixation of his seniority in the

cadre of Vice-Principals. This was forwarded and recommended by the Additional Director of Education on 17.7.1986 (Annexure A-12). In spite of the recommendations of the Additional Director of Education and his actual working as Vice-Principal on the recommendation of D.P.C., his name was omitted from the tentative seniority list of Vice-Principals issued in November, 1986. The applicant is aggrieved that many vice-Principals who joined service long after him have been promoted to higher ranks and the applicant is denied the benefit of the same.

Applicant's contention was that the post of A.V.O. was made equivalent to that of Vice-Principal and the applicant worked as Vice-Principal, yet his name was not placed in the seniority list of Vice-Principals. Secondly, there could be no reservation for a single post in the category of S.C./S.T. candidate. The said post was available for general category candidate also. Thirdly, there could be no discriminatory treatment between candidates when the post of A.V.O. had been made equivalent and interchangeable to that of a Vice-Principal of a College under the Delhi Administration. The exclusion of the applicant alone was patently erroneous and offended the provisions of Articles 14 and 16 of the Constitution.

23

On behalf of the respondents, a reply has been filed. It is stated therein that the applicant's name was not excluded deliberately from the seniority list. The post of A.V.O. is an ex-cadre post and as such, his name could not be included in the seniority list of Vice-Principals. It was further pleaded that the post of A.V.O. was never clubbed with the post of Vice-Principal. His name could not be included in the seniority list of Vice-Principals as he was holding an ex-cadre post against which he was appointed. It was further submitted that the post of A.V.O. was not feeder post of Principal. It was admitted that originally the post of A.V.O. was advertised for SC/ST candidate but the applicant was appointed on this post. It was further submitted that the request of the applicant as directed by the Tribunal had been considered by the competent authority on merit but the representation was rejected as the applicant was holding an ex-cadre post of A.V.O. Lastly, it was submitted that there was no case made out for interference in the present case and no relief could be given to the applicant.

In a rejoinder, the applicant reiterated that the post against which he was recruited in 1963 was a cadre post of Head Masters, which posts were subsequently converted into the post of Vice-Principals. The recruitment rules attached as Annexure A to the

reply are not relevant in the present facts and circumstances of the case. The recruitment of the applicant was made in 1963, when the said post was a cadre post and not an isolated ex-cadre post.

Shri R.K.Kamal, learned counsel for the applicant argued that the post of A.V.O. was a cadre post. The applicant worked as Vice-Principal also. His name was not included in the seniority list and the reason given was that he held an ex-cadre post. Learned counsel also argued that the replies in the written statement are vague when specific reply was needed and the Rules of 1969 had no application as the recruitment of the applicant was made earlier in 1963. It was also urged that there could be no reservation for single post and it was against public policy. In support of his arguments, he cited the following cases:

- (i) GOPAL CHANDAR BOSE Vs. THE STATE OF ORISSA AND OTHERS. (1974 S.L.J. 170).
- (ii) N.AMANULLAH Vs. THE STATE OF BIHAR & ORS. (1985 (1) SLR 225).
- (iii) SMT. INDU RAJI & ORS. Vs. U.O.I. (OA No.1292/90 decided by the Principal Bench on 3.7.1990).

The case of N. Amanullah (Supra) cited by the applicant is not an apt case. In that case, the Court observed that 'the appointment of Respondent No. 5 to

the post of Engineer-in-Chief was illegal, unconstitutional and hit by Articles 14 and 16 of the Constitution, on the ground that it being an ex-cadre post, cannot be filled up on the basis of reservation. Reference may further be made to the case of General Manager, Southern Railway and anr. Vs. Rangachari (AIR 1962 SC 36), where the scope of Article 16(4) was considered by the Supreme Court. Their Lordships observed -

"if the word 'posts' means ex-cadre posts reservation of such posts cannot possibly cure the imbalance which according to the State is disclosed in the representation in services under it. Therefore, in our opinion, the key clause of Article 16(4) which prescribes a condition precedent for invoking the power conferred by itself unambiguously indicates that word 'posts' cannot mean ex-cadre in the context".

We may now refer to a case of Smt. Indu Raji(Supra) decided by the Principal Bench of the Tribunal on 3.7.1990. In the above case, Learned Counsel for the applicant emphasised that there are no promotional avenues available for the Senior Psysiotherapists, working in the Railway hospitals and that it was necessary to provide such promotional opportunity in the light of the decision of the Supreme Court in C.S.I.R. Vs. K.G.S. BHATT (AIR 1989(2) SC 341)..

In the case of Gopal Chandra Bose(Supra), a Division Bench of the Orissa High Court at Cuttack held that where the petitioner was already in the cadre, the advantages of being in the cadre could not be taken away by the unilateral

action of the Government. The Bench held that a reporter Inspector and a Finger Print Bureau Inspector cannot be classified as different from the Handwriting Bureau Inspector. The High Court further held that there does not seem to be any rationale behind this classification. It was also held by the High Court that while the Government have power by making appropriate rules to create a cadre and also declare as to who would be included in the cadre, but the Govt. did not have the power to arbitrarily remove one officer hitherto in the cadre and treat him to be ex-cadre, particularly when it caused serious prejudice to the incumbent. Prospects of promotion cannot be divorced from service conditions and by taking away that prospect, the service conditions must be deemed to have been altered to the prejudice of the servant by the impugned administrative action.

In the case of M.R. BALAJI VS. STATE OF MYSORE (AIR 1963 SC 649), it was held that there could be no reservation for a single post and it was against public policy. Similar view was taken in the cases of CHAKRADHAR PASVAN VS. STATE OF BIHAR (1988(2) SCC 274) and SMT ARATI RAY CHOUDHURY VS. UNION OF INDIA & ORS. (1974 SCC (1&S)73). In the latter case the Supreme Court held that "when in a particular year a single vacancy arises, it cannot be filled by a reserved category candidate and it has to be treated as 'unreserved'

and filled accordingly and the reservation carried forward to subsequent three recruitment years". In respect of the case of M.R. BALAJI VS. STATE OF MYSORE (SUPRA), their Lordships held:

" Another serious infirmity in the argument of the learned counsel for the appellant is that it overlooks the basic principle that if there is only one post in the cadre, there can be no reservation under Article 16(4) of the Constitution. The whole concept of reservation for application of the 50 point roster is that there are more than one post, and the reservation as laid down by this Court in M.R. Balaji case can be up to 50 percent...."

The above principle is fully applicable to the facts of the present case. We are satisfied as there was only a single vacancy available for the year under consideration, the principle of reservation could not be invoked and that post has to be treated as unreserved. Consequently, the view taken in the cases of SMT. ARATI RAY CHOUDHURY VS. UNION OF INDIA, M.R. BALAJI VS. STATE OF MYSORE (SUPRA) and T.DEVADASAN VS. UNION OF INDIA (AIR 1964 SC 179), all apply to the facts of the present case.

In view of the above, this O.A. must succeed on this ground alone and the applicant would be entitled to have his name included in the final seniority list of Vice-Principals and assigned him a suitable place on the basis of his length of service in the equivalent grade. He would also be entitled to a direction to be issued to the respondents to grant him all consequential, promotional and monetary benefits with retrospective effect. We order accordingly.

The above order will be carried out within three months from the date of receipt of a copy of this order. There will, however, be no order as to costs.

I.K. Raggotra
(I.K. RAGGOTRA)
MEMBER (A)
27/5/91

AS
(AMITAV BANERJI)
CHAIRMAN
27/5/91