

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

D.A.737/86

DATE OF DECISION: 18.9.1992

Jainendra Kumar Jain

.. Applicant

vs.

Delhi Administration
through the Director of Education,
Directorate of Education,
Old Secretariat, Delhi and Others

.. Respondents

For the Applicant

.. Shri A.K. Sikri

For the Respondents

.. Mrs. Avnish Ahlawat,
Advocate

CORAM

THE HON'BLE MR. S. P. MUKERJI, VICE CHAIRMAN

THE HON'BLE MR. T. S. OBEROI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes

JUDGMENT

(Hon'ble Shri S. P. Mukerji, Vice Chairman)

In this application filed on 15.9.1986 the applicant who has been working as a Language Teacher (Special Cadre) has prayed that his seniority should be re-fixed at an appropriate place above respondents 3 to 11 and that respondent No.1 be directed to promote him to the Selection Grade with effect from 1.1.75 instead of 1.4.82 with arrears of pay along with interest. The brief facts of the case are as follows:-

2. The applicant and respondents 3 to 11 were initially appointed by the Delhi Municipal Corporation to the posts of Language Teacher (Sanskrit) after selection, in accordance with the merit list as at Annexure-A1. In that merit list the applicant was shown at Sl.No.3 and respondents 3 to 11 were shown below him at Sl.Nos.4 (respondent No.3), 10 (respond-

ent No.4), 8(respondent No.5), 11(respondent No.6), 13(respondent No.7), 18(respondent No.8), 7(respondent No.9), 16(respondent No.10) and 5 (respondent No.11). Shri Varshney , respondent No.3 who ranked below the applicant at the 4th position was placed at Sl.No.103 in the final Seniority List as on 30.6.70 published by the Delhi Administration after the municipal schools were transferred to Delhi Administration. This Seniority List is at Annexure A3. Shri Varshney represented that in that list he should be shown above Shri Bishan Dutt Sharma who was placed at Sl.No.72 on the ground that whereas Shri Varshney was at Sl.No. 4 in the merit list, Shri Sharma was at Sl.No.102. Accepting the representation of Shri Varshney, respondents 1 and 2 by the order dated 27.7.81 placed Shri Varshney's name at Sl.No.91A i.e, above Shri B.D.Sharma and in the final Seniority List of Senior Language Teachers of Special Cadre, Shri Varshney was placed at Sl.No.73 and Shri B.D.Sharma at Sl.No.94. The applicant was shown at Sl.No.104 below the respondents 3 to 11 even though he had been shown above all of them in the merit list, on the basis of which Shri Varshney had been placed above Shri B.D.Sharma in the final Seniority List at Annexure A4. Against the revision of Shri Varshney's seniority above Shri B.D.Sharma, Shri Rohtas Kumar who is respondent 9 in this application and was below the applicant in the merit list moved the High Court of Delhi in Civil Writ No.531/83. He had taken up other points also. So far as the

inter-se seniority between him and Shri H.L.Varshney (respondent No.3 beforeus), the High Court on 23.3.83 rejected the contention of Shri Rohtas Kumar and upheld the revised seniority given to Shri H.L.Varshney above Shri B.D.Sharma. The interim order of the High Court dated 23.3.83 reads as follows:-

"Final seniority list of Senior Language Teachers as on 30.6.1970 was published. The petitioner is shown at No.97. One Hira Lal Varshney is shown at No.103, one Mahavir Singh Tomar at No.100 and Shiv Kumar Sharma at No.105. Apparently Hira Lal was aggrieved because it appears that he had the petitioner were selected at the same time by order dated 16.11.1964, and the petitioner was placed in the panel list after Hira Lal Varshney. That is why by an order dated 27.7.1981, Hira Lal's seniority has been redetermined, and he has been placed at No.91-A. The counsel cannot dispute that in the merit list he was placed senior to the petitioner. On that basis, there can be no objection to the seniority which has now been assigned to Hira Lal. The grievance qua that is futile. Mr. Ashok Srivastava then, however, says that subsequently the seniority has also been amended by a letter dated 23.1.1982 by which the seniority of Shiv Kumar sharma has been now fixed at 94-A and that of Mahavir Singh Tomar at 94-B instead of 105 100. The petitioner says that he has represented against them, and that though number of representations have been made, no reply has been received."



The aforesaid Writ Petition before the High Court was transferred to the Principal Bench of the Tribunal and given Transferred Application No.885/85 and was dismissed on 9.5.89 for default. The applicant before us has taken the plea that the seniority in the cadre of Language Teacher(Sanskrit) of Shri Varshney and others have been determined on the basis of the merit at the time of original selection and since he was placed above Shri Varshney in that merit list (Annexure A1), his seniority also should be revised and he should be placed above Shri Varshney. He had represented about it on 21.6.83 at Annexure A5 but the Director of Education, Delhi Administration wrote to him by communication dated 13.7.83 that no decision shall be taken till the case is decided by the High Court in the aforesaid Writ Application. His further representation dated 14.9.84 incorporating the relevant portion of the aforesaid order of the High Court dated 23.3.83 and further representations in October 1984, February 1986 and March 1986 evoked no response. The Directorate of Education promoted some of the Language Teachers to the Selection Grade posts on the basis of the defective seniority list of 30.6.70(Annexure-A3) and promoted some of the respondents who ranked below him in the merit list to the Selection Grade on 1.1.75 and various other dates between 1.5.75 and 1.11.76 (vide Annexure-A10). The applicant claims that in accordance with his correct seniority, he should have been placed above Shri B.D.Sharma who was promoted to the Selection Grade on 1.1.75 and is thus entitled to promotion with effect from

22

(14)

that date, instead of 1.4.83 when he was promoted.

He claims seniority above Shri H.L.Varshney and Shri B.D.Sharma, i.e, respondents 3 and 4 in the seniority list of Language Teacher.

3. No reply has been filed by respondent No.2, i.e, the Municipal Corporation of Delhi, where the applicant was originally appointed ^{from where} and ^{he} was transferred to the Delhi Administration with effect from 1.7.70.

4. Respondent No.1(i.e, Delhi Administration) in the reply affidavit ^{has} ~~have~~ stated that in accordance with the terms and conditions of transfer of teaching staff of the schools from the Municipal Corporation of Delhi (MCD) to the Delhi Administration, the right to change seniority lies with the MCD only. They have stated that the inter-se seniority position has been challenged by Shri Rohtas Kumar, respondent No.9 in this case in a transferred writ petition pending before the Central Administrative Tribunal No.T-885/85. They have stated that in accordance with the agreement between the M.C.D and Delhi Administration, the inter-se seniority position of the erstwhile employees of the MCD transferred to the Delhi Administration would not be disturbed by the Delhi Administration. The seniority of Shri H.L.Varshney (respondent No.3) was changed after consultation with the MCD. Respondent 1 has stated that the writ petition filed by Shri Rohtas Kumar challenging the re-fixation of seniority of Shri H.L.Varshney "is still pending and the respondent No.1 has rightly deferred the case of

Fr



the petitioner till the decision of the case for the reason that the petitioner is claiming his seniority on the basis of the seniority position given to Shri H.L. Varshney, but that action of the authorities is since under challenge, the respondents cannot give the applicant the same relief till the time the petition filed by the said Rohtas Kumar is decided". They have clarified that Shri H.L. Varshney (respondent No.3) has been given selection grade conditional upon his seniority not being altered in the aforesaid writ petition and that in case, his seniority is altered, he will have to forego the selection grade.

5. In the rejoinder the applicant has stated that the seniority lists at all times ^{have} been circulated under the authority of the first respondent and falls within the jurisdiction of that respondent. Since the applicant is working under respondent No.1, the determination of his seniority is the responsibility of the first respondent and not the MCD. Relying upon the interim order passed by the High Court on 23.3.83, he has stated that the seniority of Shri Varshney has been finally adjudicated upon and upheld by the High Court and therefore, there is now no impediment to the re-determination of the seniority of the applicant on the basis of his position in the merit list.

6. Respondent No.3 in his reply dated 18.5.87 has stated that when the final seniority list was circulated by the Delhi Administration on 27.7.81 and objections were called for, nobody including the petitioner filed any objection within the prescribed

(16)

time limit and the Delhi Administration vide their communication dated 26.8.81 informed him that he has been assigned the seniority at Sl.No.91A in the final seniority list. He has argued that the applicant's seniority cannot be amended at this stage by the Delhi Administration as that right lies with the Education Department of the MCD.

7. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It was brought to our notice that the Transferred Writ Petition No.885/85 filed by respondent No.9 against the seniority of respondent No.3 and for other reliefs was dismissed for default on 9.5.89 by a Division Bench of this Tribunal. In the circumstances and in accordance with sub-para X of para-6 of the counter affidavit filed by respondent No.1, respondent No.1 will have to consider the representation of the applicant for re-fixation of his seniority. For the sake of ready reference, the aforesaid para of the counter affidavit filed by respondent No.1 is quoted below:-

"X. Para X is admitted. It is submitted that the petition filed by Shri Rohtas Kumar against challenging the re-determination of seniority of Shri H.L.Varshney is still pending and the Respondent No.1 has rightly deferred the case of the petitioner till the decision of the case for the reason that the petitioner is claiming his seniority on the basis of the seniority position given to Shri H.L.Varshney, but that action of the authorities is since under challenge, the Respondents cannot give the Applicant the same relief till the time the petition filed by the said Rohtas Kumar is decided." (emphasis added)



In accordance with the orders of the High Court dated 23.3.83 in the aforesaid writ petition , quoted earlier, the seniority given to Shri Varshney, respondent No.3 at Sl.No.91A in the final seniority list is proper. The fact that Annexure A1 is the merit list of the panel as repeatedly averred by the applicant has not been denied by the respondents. The applicant's contention that since he is at Sl.No.3 in the merit list immediately above Shri H.L.Varshney who is at Sl.No.4, he should also be placed above Shri H.L.Varshney in the final seniority list , carries considerable weight.

8. In the facts and circumstances, we allow the application in part to the extent of directing respondent No.1 to consider the representation of the applicant dated 11th September 1984(Annexure A6), dated October, 1984(Annexure A7), dated 15.2.86(Annexure-A8) and dated 21.3.86(Annexure A10) in consultation with respondent No.2 keeping in view the order of the Hon'ble High Court dated 23.3.83, referred to above, and re-fix his seniority in accordance with law and give him all consequential benefits including grant of Selection Grade with effect from the date his immediate junior in accordance with the revised seniority, if any, was promoted to that grade. Arrears of pay and allowances on that basis should also be paid to him. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

Devi 18.9.92
(T.S.OBEROI)
JUDICIAL MEMBER

S2
18.9.92
(S.P.MUKERJI)
VICE CHAIRMAN