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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1862/87

Date of decision 26/4/1989

Dr. Sita Ram Sharma

.....Applicant

Vs.

Lt. Governor Delhi and Others

.....Respondents

For the Applicant

.....Shri S.K. Bisaria,
Counsel

For the Respondents

.....Shri M.M. Sudan,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *No*

JUDGMENT

(The Judgment of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is working as Assistant Director of Education in the Directorate of Education, New Delhi filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying that he be declared senior to respondents Nos. 3 to 6 in the cadre of Assistant Directors of Education in the seniority list issued on 30.10.1987 and that the promotion of respondent No.3 (Smt. Usha Menon) dated 8.12.1987 be quashed.

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2. The impugned seniority list dated 30.10.1987 was issued by the respondents pursuant to the judgment of this Tribunal in O.A. Nos. 217 A and 496 of 1986 (S/ Shri N.S. Verma and J.N. Goyal and Another Vs. Union of India and Others). In that case, the Tribunal by its judgment dated 29.1.1987 directed the respondents to draw up a seniority list of Assistant Directors/Education Officers strictly on the basis of the rulings of the Supreme Court as discussed in the Judgment and on the basis of length of officiation as Assistant Directors or equivalent posts during the period when quota-cum-rota system was not followed.

3. The grievance of the applicant is that the respondents have prepared the impugned seniority list dated 30.10.87 contrary to the directions contained in the aforesaid judgment. In the said seniority list the name of Smt. Usha Menon is shown at S.No.49 while the applicant's name figures at S.No.53. The names of Shri Taulia (respondent No.6), Smt. S. Nayyar (respondent No.4) and Shri Purang (Respondent No.5) figure at S.Nos. 50,51 and 52 respectively. The case of the applicant is that his name ought to have figured at S.No.49 instead of at S.No.53.

4. The respondents have stated in their counter affidavit that "a tentative seniority list of ADE/EO was issued by them and objections were invited thereon. To meet these objections, a Committee of the Officers was constituted and on the recommendation of the Committee, it

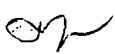
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was observed that in 1983 in which both the modes of recruitment were operated, the seniority should be fixed as per the instruction laid down by the Government of India vide Ministry of Home Affairs O.M. No.9/45/60-Estt.(D) dated 20.4.1961. Keeping in view the judgment pronounced in the case of Narinder Chaddha Vs. U.O.I. Smt. Usha Menon is senior to Dr. Sita Ram Sharma. So the claim of Dr. Sita Ram Sharma is not maintainable as per the guidelines laid down by the Committee."

5. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The final seniority list as drawn up by the respondents vide the impugned Memorandum dated 30.10.87 insofar as it is relevant to the present case is extracted below:-

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S.No.	Name of the Officer	Date of Birth	Date of Appt. as Principal	Date since when continuously working as ADEs/EOs.	Whether DR/DP	Remarks
40.	Sh. J.N. Goel	20.4.32	1.10.62	16.2.81	DP	Working as DDE
41.	Sh. N.S.Verma	25.7.32	23.11.62	16.2.81	DP	DDE
46.	Shr.B.D.Bhugna	10.10.31	21.8.62	10.11.81	DP	Working as DDE
48.	Sh.N.K.Choudhary	17.10.29	-	28.3.83	DR	- do -
49.	Smt. U. Menon	20.10.35	15.7.63	1.8.83	DP	Promoted as DDE 8.12.87
50.	Sh.N.S.Taulia(ST)	1.7.43	-	17.8.83	DR	
51.	Smt.S. Nayyar	9.3.32	1.5.64	1.8.83	DP	
52.	Sh.Y.P. Purang	13.4.36	-	13.10.83	DR	
53.	Sh. S.R. Sharma	26.1.32	20.7.65	1.8.83	DP	
78.	Mrs. Tuleshwari Devi	9.9.43	-	13.5.86	DR	



(vide page 14 of the Paper Book)

6. The learned counsel of the applicant stated that the applicant, Smt. Usha Menon and Smt. S. Nayyar had started their continuous officiation as ADE with effect from 1.8.83 and that he being elder to Smt. Menon and Smt. Nayyar, he should have been shown senior to both of them. Shri Taulia had started continuously working as ADE with effect from 17.3.1983 and that Shri Purang with effect from 13.10.83 and, therefore, they also should not have been shown senior to the applicant.

7. The learned counsel of the respondents drew our attention to the statement contained in the counter affidavit which has been extracted above. He has also produced before us the noting in the file No.F-3/1/84-Edn. wherein the criteria adopted by the committee for finalising the seniority list has been set out. The following extracts from the note of the Joint Secretary(Education) which was approved by the Lt. Governor is relevant:-

" The committee has followed the ratio of decision of the 'CAT' and the Supreme Court judgment in the case of Narender Chadha Vs. U.O.I. From the ratio of the judgment the committee had felt that in the years direct recruitment had not taken place and thus the rota-quota system has been violently disturbed the seniority of the teachers will be fixed according to the date of the continuous officiation. In the years in which there was direct recruitment, the seniority will be decided on the basis of the rota-quota system and if there was less number of direct recruits as compared to promotees after the rotation has been applied, the rest will be bunched together enblock in the same year. Further the committee has also decided while examining the objections that in view of different categories of Principals--male, female and special cadre, the inter-se seniority of ADE/EO promoted from these categories will be on the basis of their seniority as Principals which is on the basis of their date of promotion/appointment as Principals. In the case of inter-se seniority among the same category respective seniority will be maintained. On the basis of the above the objections were disposed off and accordingly fresh seniority list has been prepared."

Or

8. In our opinion, the final seniority list has not been drawn up in accordance with the directions contained in our judgment dated 29.1.1987. According to our judgment, the seniority list of Assistant Directors/Education Officers is to be drawn up strictly on the basis of the rulings of the Supreme Court as discussed in the judgment and on the basis of length of officiation as Assistant Directors or equivalent posts during the period when quota-cum-rota system was not followed. The period of officiation of the officers as Assistant Directors should be taken into account as qualifying service for being considered for the purpose of promotion as Deputy Directors. In para.4 of our earlier judgment, it had been observed that "in no year between 1967 and 1985 was the quota system followed and equal number of vacancies were filled through direct recruitment and departmental promotions." In para.5 of the judgment we had observed that "in the instant case, quota-cum-rota system was honoured more in the breach than in observance and, therefore, the principle of computing seniority on the basis of length of continuous officiation in accordance with the rulings of the Supreme Court is inexorably compelling."

9. In view of the aforesaid directions and observations contained in our judgment dated 29.1.1987, we are of the opinion that it was not open to the committee constituted to prepare the seniority list to hold that in the years in

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which there was direct recruitment, the seniority will be decided on the basis of the rota-quota system and if there was less number of direct recruits as compared to promotees after the rotation has been applied, the rest will be bunched together enblock in the same year. Nor it was open to the committee to take into account the seniority of Principals in regard to preparation of seniority list of Assistant Directors.

10. In view of the foregoing, we are of the opinion that the impugned seniority list dated 30.10.1987 has not been prepared in accordance with the observations and directions contained in our judgment. We, therefore, quash the said seniority list with the directions to the respondents that they should prepare a fresh seniority list in strict accordance with the observations and directions contained in our judgment dated 29.1.1987 and the observations hereinabove. Thereafter, the further promotions to the post of Deputy Director should be made on the basis of the seniority list so prepared.

11. The application is disposed of on the above lines. The parties will bear their own costs.


(M.M. MATHUR)
ADMINISTRATIVE MEMBER


(P.K. KARTHA)
VICE CHAIRMAN(J)