

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 599/90
T.A. No.

199

DATE OF DECISION 17.5.1991

Shri D.R. Nim Petitioner

Shri B.B. Raval Advocate for the Petitioner(s)

Versus

Chief Secretary, Delhi Respondent

Administration & Another

Mrs. Avnish Ahlawat Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

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? /No
4. Whether it needs to be circulated to other Benches of the Tribunal? /No

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

The applicant, who is working as Vice-Principal in Government Boys Senior Secondary School at Nangloi, Delhi, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) To direct the respondents to promote him to the post of Principal from 6.10.1976, i.e., the date from which his immediate junior Scheduled Caste Officer was promoted; and
- (ii) to direct them to pay the difference of pay and allowances and arrears with 18% interest till realisation.

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2. The pleadings in this case are complete. The application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so.

3. The applicant has stated that he was appointed as Trained Graduate Teacher (TGT) in 1962 and as Post Graduate Teacher (PGT) in 1968. He was given an adverse ACR remark for the year 1972-73 which was expunged in 1978. However, this adverse remark came in the way of his promotion to the post of Principal/Vice-Principal. He was promoted to the post of Vice-Principal on 26.2.1979 and regularised as such with effect from 21.7.1980. He has stated that he could not be promoted to the post of Principal/Vice-Principal in 1976 due to the adverse entry in the ACR for 1972-73.

4. The respondents initiated an inquiry against the applicant in regard to the LTC availed by him in 1979. The respondents also passed an order to recover the LTC amount from the applicant. The respondents, however, reviewed the said decision and revoked the order for recovery from the applicant without prejudice to departmental proceedings already pending/contemplated against him.

5. The applicant belongs to the Scheduled Caste community. He has alleged that his non-promotion by the respondents is in violation of the rules made by

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the Government in favour of Scheduled Castes and Scheduled Tribes.

6. The applicant has stated that he had filed OA 247/86 in the Tribunal which was decided by judgment dated 1.7.1987 and a direction was issued to the respondents to hold review DPG and consider him for promotion as Principal/Vice-Principal in 1987, from the date on which his immediate junior Scheduled Caste/Scheduled Tribe officer was promoted. He was also given all benefits including difference of pay and allowances, arrears, seniority etc. The applicant has annexed a copy of the judgment of the Tribunal dated 1.7.1987 at pages 22-23 of the paper book. According to him, he was promoted as Vice-Principal only with effect from 6.10.1977 and that he has not been promoted as Principal till date. He had filed several representations and Contempt of Court Petitions in the Tribunal. By order dated 10.8.1989, the Tribunal had given him liberty to file a separate application/under Section 19 of the Administrative Tribunals Act, 1985, as the CCP filed by him was not found to be maintainable.

7. It is in the above background that the present application has been filed by him.

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8. The respondents have stated in their counter-affidavit that the present application is barred by the principle of res judicata. They have relied upon the following order passed by the Tribunal on 26.5.1988 on the CCP filed by him:-

" As regards applicant's promotion as Principal, it has been brought to our notice that the DPC considered him but did not find him fit as Principal. The relevant papers have been shown to us".

9. Thereafter, the applicant filed OA 1878/88 which was also dismissed on 22.11.1988, copy of which has been annexed as Annexure R.1 to the counter-affidavit, pages 42 to 45 of the paper book. In OA 1878/88, the applicant had made the following prayers:-

"1. That the applicant may kindly be promoted to the post of Principal w.e.f. 7.9.76 since when his junior Shri M.P. Singh has been promoted with all consequential benefits, and
2. That if this Hon'ble Tribunal thinks the review of the DPC proceedings essential, the whole DPC proceedings related S/Castes candidates may kindly be ordered to be reviewed either by the UPSC or by the Ministry of Home Affairs, Government of India, Department of Administrative Reforms".

10. The Tribunal rejected the application with the

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following observations:-

" It will be noticed that the prayer of the applicant is that he should be given promotion retrospectively to the post of Principal from 1976. As we have already stated, the same question came up before this Tribunal in the Contempt of Court Proceedings and this Tribunal noticed that the case of the applicant had been duly considered and he had not been found fit for promotion. This Tribunal also saw the relevant proceedings in which the applicant's case was considered and, therefore, dismissed the petition for contempt. Thus the matter stands concluded by a decision of this Tribunal. We cannot sit in judgment over that as if we were an appellate court. This being so, we are of the opinion that this application does not deserve to be admitted and adjudicated upon.

In view of the above, we reject this application at the stage of admission itself. The parties are left to bear their own costs."

11. In the light of the above, we are of the opinion that the applicant has not made out a *prima facie* case for the admission of this application. The application is devoid of merit and it is, therefore, dismissed at the admission stage itself.

There will be no order as to costs.

B. N. Dhoudiyal
(B.N. DHOUDIYAL)
MEMBER (A)

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