

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.619/90

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New Delhi, this the 26<sup>th</sup> day of August, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri K.Muthukumar, Member (A)

Shri Ved Prakash,  
r/o B-68, Dayanand Colony,  
Lajpat Nagar,  
New Delhi.

....Applicant

(By Advocate: Shri G.D.Gupta)

-versus-

1. Delhi Administration through  
Chief Secretary,  
Delhi Administration,  
5 Sham Nath Marg,  
Delhi.
2. The Secretary-cum-Commissioner(Edu.),  
Delhi Administration  
5, Sham Nath Marg,  
Delhi.
3. The Joint Secretary (Education)  
Delhi Administration,  
Old Secretariat,  
Delhi.
4. The Director of Education,  
Old Secretariat,  
Delhi Administration,  
Delhi.
5. The Principal,  
State Institute of Education,  
Delhi Administration,  
Directorate of Education,  
Roop Nagar,  
Delhi.

....Respondents

(By Advocate: Shri Jog Singh)

O R D E R

[Dr. Jose P. Verghese, Vice-Chairman(J)]

The applicant has filed this application under  
section 19 of the Administrative Tribunals Act, 1985  
against the order dated 24.5.1989 by Administrative  
Officer (E-I), Directorate of Education, Delhi, regarding  
filling up of the post of Senior Librarian in the pay

scale of Rs. 650-1200 (Revised to Rs. 2000-3500/-) in the State Institute of Education, Delhi and promotion order of Shri Ved Prakash, Librarian (applicant).

2. The grievance of the applicant is that though his name has been recommended by the DPC for promotion to the post of Senior Librarian in the pay scale of Rs. 2000-3500, the respondents have not so far appointed him to the said post and scale and, therefore, the applicant has prayed that the respondents may be directed to issue orders of promotion of the applicant to the post of Senior Librarian in the pay scale of Rs. 2000-3500/- in the State Institute of Education, Delhi Administration, Directorate of Education, Delhi, with retrospective effect from 11.11.1988 with all consequential benefits.

3. The respondents have, in their reply, contended that though the DPC had recommended the applicant's name to the post of Senior Librarian, he could not be appointed to that post in the State Institute of Education because sanction of the above post lapsed in Feb., 1988 and it did not exist thereafter and in the meanwhile, the State Institute of Education having been transferred to State Council of Educational Research and Training (SCERT), there is no question of appointing the applicant in the absence of sanctioned post available in the organisation.

4. This petition has come up for hearing on 14th August, 1994 and this court, taking into consideration a statement given by the respondents in

their reply that there is no sanctioned post for Senior Librarian in the scale of Rs. 2000-3500/- available under the respondents to be filled up, dismissed the OA as the petitioner was not entitled to any relief. (12)

5. Aggrieved by the said order, petitioner filed a review application against the said order dated 14th August, 1994 stating that the statement of the respondents based on which the OA was originally dismissed was a false statement and the respondents have on the basis of the said false statement, now procured an order from this court. It was also stated by the review applicant that the DPC was infact held in the month of November in the same year and there could not have been DPC held for the post if the very post itself has lapsed in the month of Feb., 1988. Petitioner presented to the court a copy of the order of the respondents dated 3.5.1988 by which the sanction of the post has been shown to have been extended till Feb., 1989. In the circumstances and in view of the fact that no explanation was forthcoming in reply to the review application from the side of respondents in spite of several opportunities, this court by an order dated 4.7.1997 allowed the review application and restored the file for hearing. It was stated in the said order that the parties shall argue the case peremptorily on 17.7.1997 on the basis of the pleadings in the original OA since the matter is pending in this Tribunal since 1990.

6. The reason why we had allowed the review application was mainly because of the alleged false statement of the respondents and the said statement was

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contained in the affidavit filed on 23rd July, 1990 duly verified by Joint Secretary (Education), Delhi Administration, Delhi without disclosing the name of the official. In the circumstances an additional notice was issued to the said officer who has verified and filed the said counter affidavit to show cause as to why appropriate orders shall not be passed against him. We were giving him an opportunity to show why a false statement was made in the counter affidavit while the subsequent order shows that the post concerned has been subject to extension of sanction till Feb., 1989. The court had also directed the said Joint Secretary (Education) to file an affidavit before the next date of hearing and the matter was posted for hearing on 17.7.1997.

7. On the said date of <sup>he</sup>ring no explanation or any response to the show cause notice from the side of respondents was forthcoming and the court in the interest of justice, decided to give one more opportunity to the respondents to indicate to the court who were the officer who had signed the counter affidavit in June, 1990. In the absence of the availability of such officer, a responsible officer of the same rank who would in his place file a similar counter affidavit in accordance with the letter, may be directed to file a reply to the said show cause notice and it was also stated that if no reply is forthcoming by the next date of hearing and in view of our finding that the respondents had deliberately made a false statement in the reply to this Tribunal and made

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this Tribunal to pass a wrong order will be viewed seriously and appropriate orders will be passed in the absence of such reply.

8. In spite of the said order, the respondents preferred to remain silent and not come to the court with clean hands availing the opportunity given by the court. In the circumstances, we proceed to pass a final order after hearing the counsel on either side.

9. The relief claimed by the petitioner is that the petitioner was holding the post of Librarian in the grade of Rs. 1640-2900/- and is now claiming promotion to the post of Senior Librarian in the pay scale of Rs. 2000-3500/- on the basis of the DPC's finding that he is found eligible and recommended. His appointment was not forthcoming only because of the wrong stand taken by the respondents that the post has been lapsed now. In view of the letter produced by the petitioner that the said post at the relevant point of time had not been abolished on the other hand the sanction has been extended, petitioner is entitled to the relief claimed.

10. It was also stated by the respondents that all the posts of this nature had been transferred to SCERT by an order dated 27.4.1989 but the respondents again by an order dated 24.5.1989 retained the post of Senior Librarian back in the Delhi Administration and not in the SCERT. In the circumstances, the availability of the vacancy has also been shown positively on the record, the only conclusion that remains is only to allow this OA

and we issue the following directions as consequential reliefs, in view of the fact that the petitioner has retired on 31.12.1990:


- (a) Respondents shall pass appropriate orders promoting the petitioner in view of the DPC's recommendation to the post of Senior Librarian in the scale of Rs. 2000-3500/- and the petitioner will be entitled to all consequential reliefs to such promotion till the date of superannuation.
- (b) By way of clarification, it is stated that the petitioner will be entitled to the difference of pay and the same is being calculated as Rs. 5000/- and is being awarded to the petitioner by way of cost to this OA. Petitioner will<sup>not</sup> be entitled to any other arrears.
- (c) Petitioner is entitled to notional re-fixation of his pay and the respondents shall arrive at the last pay drawn for the purpose of payment of pension and the petitioner will be entitled to the revised pension with effect from the date of superannuation namely 31.12.1990 including arrears of pension.

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(16)

(d) In the circumstances, we also direct the respondents that the petitioner is entitled to a compensation, in addition to other payment, of Rs. 1000/- at the instance of the respondents in view of the direction given above.

In these terms, this OA is allowed to the extent stated above and there shall be no order as to costs.

  
(K. Muthukumar)  
Member (A)

naresh

  
(Dr. Jose P. Verghese)  
Vice-Chairman(J)