

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 803/1990
T.A. No.

199

DATE OF DECISION 7.6.1991

<u>Shri R.S.S. Shishodia</u>	Petitioner
<u>Shri G.D. Gupta</u>	Advocate for the Petitioner(s)
Versus	
<u>The Administrator of Union Territory of Delhi & Others</u>	Respondent
<u>Shri M.C. Garg</u>	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? */m*
4. Whether it needs to be circulated to other Benches of the Tribunal? */m*

JUDGMENT

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

The applicant, who is working as Joint Director of Education, Directorate of Education, Delhi Administration, has sought the following reliefs in this application filed under Section 19 of the Administrative Tribunals Act, 1985:-

(i) To declare him entitled to be promoted to the post of Additional Director of Education with effect from 1.6.1988, with all consequential benefits, such as arrears of pay and allowances etc., and

(ii) to direct them to promote him to the said post with effect from 1.6.1988 from which date the vacancy in the said

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post arose.

2. The facts of the case are undisputed. The applicant was initially appointed as Principal on 29.7.1960 and he has worked in that capacity in various Government schools. He was promoted as Education Officer in 1976, as Deputy Director of Education in 1984 and as Joint Director of Education (Planning) in 1988. His promotion to the post of Assistant Director was on officiating basis. His promotions to the post of Deputy Director and Joint Director were ^{also} on ad hoc basis. In this context, the applicant has stated that the aforesaid ^{ad hoc} promotions had to be made in view of the stay order passed by the Tribunal in OA 1888/87 on 12.1.1988. The seniority of Assistant Directors in the Directorate of Education, Delhi Administration is pending adjudication in the said application. The Tribunal has given an interim order to the effect that in case any promotions are made in the post of Deputy Director of Education on the basis of the impugned seniority list, the same should be treated as purely ad hoc and subject to the final decision of the case.

3. The applicant has stated that in view of the above, promotion even to the post of Joint Director of Education had to be made on ad hoc basis.

4. The post next higher to that of Joint Director of Education is that of Additional Director of Education. According to the relevant recruitment rules, the post of Additional Director of Education is required to be filled by promotion failing which by transfer on deputation, the selection being made in consultation with the UPSC, and failing both by direct recruitment. So far as the method of promotion is concerned, the promotion is required to be done as follows:-

- (i) Joint Director of Education (Planning) with at least two years' regular service in the grade;
- (ii) Failing (i) above, four years' total regular service in the grades of Joint Director of Education (Planning) and Deputy Director of Education/Principal, State Institute of Education/Deputy Director of Education (Science)/combined together;
- (iii) Failing (i) and (ii) above, Deputy Director of Education, Principal, State Institute of Education/Deputy Director of Education (Science) with five years regular service in the respective grade.

5. The applicant has stated that a post of Additional Director of Education (R&D) fell vacant with effect from 1st June, 1988 due to retirement of the then incumbent of the said post, namely, Shri K.3. Bhandari. According to him,

he was fully eligible for promotion to the post of Additional Director of Education. The representations submitted by him did not yield any favourable response.

6. The respondents have contended that the applicant does not fulfil the essential requirements of the rules for the purpose of promotion. They have submitted that he was considered for promotions in relaxation of rules but the same was not approved by higher authorities. They have further submitted that the question of promoting him with effect from 1.6.1988 does not arise as he has no right to ask the Administration to fill up the post from a particular date.

7. We have carefully gone through the records of the case and have considered the rival contentions. The respondents have not denied the assertion made by the applicant that one post of Additional Director of Education fell vacant on 1.6.1988 on account of the retirement of the then incumbent, Shri K.S. Bhandari. The stand of the respondents that they considered the case of the applicant for promotion in relaxation of the rules, is not very convincing. Due to the operation of the stay order passed by the Tribunal in OA 1888/87 on 12.1.1988, promotions to the post of Deputy Director and Joint Director of Education had to be made on ad hoc basis. This has not been controverted by the respondents in their counter-affidavit. The applicant would become

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eligible for promotion if his ad hoc service is counted as regular in the peculiar facts and circumstances of the case where the operation of the stay order has prevented the respondents from taking steps to make regular appointments. He had put in more than four years as Deputy Director of Education and Joint Director of Education as on 1.6.1988. The applicant has cited the precedent of Shri S.K. Shukla who was also promoted to the post of Additional Director of Education (Schools) in March, 1988 and he was also holding the post of Joint Director (Education) on ad hoc basis. He has also relied upon the direction of the Tribunal in OA No.217A of 1986 and OA 494 of 1984 (Shri N.S. Verma Vs. Union of India) that the period of officiation of the applicants as Assistant Directors should be taken into account as qualifying service for the purpose of promotion as Deputy Directors. The above averments remain unrebutted.

8. The applicant has also referred to the case of Dr. Sita Ram Sharma, who was given promotion to the post of Deputy Director of Education on ad hoc basis vide order dated 23.1.1990 even though he was going to retire from service with effect from 31.1.1990. The respondents have stated in their counter-affidavit that

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Shri Sharma was given promotion as a result of revision of seniority and in compliance with the orders of this Tribunal.

9. At the time of filing of the present application, the applicant was about 58½ years of age. In case the age of retirement is to be reckoned as 58 years, he would have retired on 1.10.1989. His claim that he would retire only at the age of 58 like the other teachers of the Delhi Administration was considered by this Tribunal in OA 2005 of 1989 decided on 29.1.1990. It was held that though even after his promotion to the post of Assistant Director of Education/Education Officer from the post of Principal, he continued to be a teacher and since the age of superannuation for teachers was 60 years, the age of superannuation of even for Assistant Director of Education/Education Officer and incumbents of higher posts should be 60 years. However, the Tribunal felt that this is a question which the Department should decide immediately, he should at least be given option either to revert to the post of Principal and thus go upto the age of 60 years or if he gives option to remain in the post of Joint Director (Planning), he can retire at the age of 58 years.

10. Aggrieved by the above judgment, the applicant filed

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a Special Leave Petition (S.L.P. (Civil) NO. 2562) in the Hon'ble Supreme Court and the same is still pending. The Hon'ble Supreme Court, however, granted status quo since during the pendency of the Original Application, the applicant had been granted stay against his retirement and the result of the status quo granted by the Hon'ble Supreme Court ^{is a} ~~has been~~ that the applicant has been continuing as Joint Director of Education (Planning).

11. In the facts and circumstances of the case and having regard to the precedents^a of Shri S.K. Shukla who was appointed as Additional Director of Education though he had held the post of Joint Director of Education on ad hoc basis and other precedents mentioned above, we are of the view that the applicant who is similarly placed should also be given the same treatment as Shri Shukla. The fact that he would have attained the age of 58 years on 1.10.1989 was not a relevant factor for not considering his suitability for promotion on ad hoc basis from 1.6.1988 when the post of Additional Director fell vacant. The application is, therefore, allowed with the following orders and directions:-

- (1) The respondents are directed to consider the suitability of the applicant for promotion to the post of Additional Director of Education from 1.6.1988. In case he is found suitable, he shall be promoted to the

said post and he would be entitled to arrears of pay and allowances and other consequential benefits.

(2) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

(3) We make it clear that the question whether the applicant would be entitled to reckon the period from 1.10.1989 to 1.10.1991 as qualifying service for pension and other retirement benefits would depend upon the outcome of the SLP filed by the applicant in the Supreme Court, mentioned above.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 7/6.
MEMBER (A)

arrupt
7/6/91
(P.K. KARTHA)
VICE CHAIRMAN (J)