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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.No.842/91

Date of Decision:08.01.1993

Smt. Sneh Prabha

Applicant

Versus

Delhi Administration and anr.

Respondents

Shri G.D. Gupta

Counsel for the applicant

Mrs. Avnish Ahlawat

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

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

JUDGEMENT

delivered by Hon'ble Member Shri B.N. DHOUNDIYAL)

The applicant in this OA Smt. Sneh Prabha is aggrieved that the benefit of the Judgement of this Tribunal in the case of her similarly situated colleagues in OA 363/87 (Smt Nirmal Kumari Vs. Delhi Administration) decided on 30.10.1988, has been denied to her vide impugned letter dated 19.3.90 on the ground that she was not one of the applicants in that case.

2. According to the applicant, her name was sponsored by the Employment Exchange to the Directorate of Education, Delhi Administration for the post of Post Graduate Teacher (Commerce) in January 1984. She was selected through an interview and her name was borne in the panel at Sl.No.16 for the post of P.G.T.(Commerce). The appointments were to be made from this panel till the last candidate was appointed. Upto 1987, as many as 12 candidates were so appointed. Thereafter in 1989 fresh requisitions were sent to

the Employment Exchange. The applicant was called for the test, but was not selected. A similar panel had been prepared for subjects of Sanskrit and Economics in 1984 and two of her colleagues, namely, Smt. Nirmal Kumari and Shri Malkan Singh filed an OA No.363/87 in this Tribunal. This Tribunal held that as the applicants in that case had already been empanelled, they had the right to be appointed and could not be bye-passed. She submitted a representation to the Director of Education on 20.1.90 followed by a reminder on 28.2.90. Vide memo dated 19.3.90, She was informed that the above cited case had only 2 petitioners, who had since been given the desired reliefs and that the said judgement could not be made applicable to non-petitioners. Following reliefs have been prayed for, in the application:

- "(A) allow this Original Application of the applicant with costs;
- (B) issue appropriate direction or directions, order or orders
 - i) quash the Memo dated 19th March 1990;
 - ii) declare the applicant entitled to be appointed as PGT (Commerce) as per the panel for the said post prepared in July 1984 with all consequential benefits, such as arrears of pay and allowances, seniority, further promotions, if any, etc. to which she would have been entitled, had she been appointed on the post of PGT(Commerce) on due date;
 - iii) directing the respondents to appoint the applicant as PGT (Commerce) with effect from the due date on the basis of the panel for the post of PGT(Commerce) prepared in July 1984 with all consequential benefits, such as, arrears of pay and allowances seniority, further promotions, if any, etc. to which she would have been entitled, had she been appointed on the said post of PGT(Commerce) on due date; and
- (C) issue such other appropriate direction or directions, order or orders as may be deemed fit and proper to meet the ends of justice".

3. On 26.4.91, this Tribunal passed an interim order directing the respondents to keep one post of PGT(Commerce) vacant. This order has been continued till date.

4. The respondents have contended that only 12 vacancies were intimated to the Employment Exchange and 12 appointments have already been made from this panel. In accordance with circular dated 30.12.1976 issued by the Department of Personnel and Administrative Reforms, the panel drawn by the DPC is normally valid for only one year. The period can be increased at the most by six months or till a fresh panel is prepared, whichever is earlier. Fresh interviews had to be held in 1989 for the subsequent vacancies. None except Smt. Nirmal Kumari and Shri Malkan Singh have been given appointments in 1987 on the basis of the OA filed by them. Their case was decided by the Tribunal on 30.10.1989 and this application filed in 1991 is clearly time barred.

5. We have gone through the records of the case and heard the learned counsel for both parties. The request of the applicant to extend the benefit of Judgement of Smt. Nirmal Kumari's case was considered by the respondents and rejected on 19.3.90. We, therefore, hold that this application is not time barred.

6. It is mentioned in the Minutes of the Meeting of the Staff Selection Board held on 23 and 24th of April, 1984 that the academic year 1984-85 had just begun and the actual number of vacancies in the current academic year could not be specified. It was recommended that the size of the panel approved may be in consonance with the requirement of past few years in the subject and in anticipation of the vacancies likely to arise. This shows that the panel was prepared not only for the existing vacancies, but also for those anticipated to arise in future.

7. The Department of Personnel and Training have issued revised instructions on 8.2.82, which clarify the question of validity of the panel as under:-

"Once a person is declared successful according to merit list

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of selected candidates, which is based on the declared number of vacancies, the appointing authority has the responsibility to appoint him even if the number of vacancies undergoes a change, after his name has been included in the list of selected candidates. Thus, where selected candidates are accommodated or alternatively intake for the next recruitment reduced by the number of candidates awaiting appointment, the candidates awaiting appointment should be given appointments first, before starting appointments from a fresh list from a subsequent recruitment of examination."

Revised instructions on these lines have been issued by the Delhi Administration on 14.2.86".

8. The above clarifications are in line with the judgements of this Tribunal in the case of Ishwar Singh Khatri and others versus Delhi Administration (ATR 1987(1) CAT 502, the Judgement of the Supreme Court dated 4.8.89 in the Civil Appeal No.1988 of 1987 filed by the Union of India against the aforesaid judgement of the Tribunal and of the Supreme Court in Prem Prakash Vs. UOI, AIR 1984 SC 1831 and the judgement of this Tribunal in the above mentioned case of Smt. Nirmal Kumari; OA 363/87, decided on 30.10.1989. We respectfully reiterate the same view. The applicant having been empanelled, has the right to be appointed and cannot be bye-passed. The fact that she appeared in the subsequent examination and failed to qualify would not affect the legal position. Since the post has been directed to be kept vacant for her by virtue of the interim order passed by this Tribunal, there should be no difficulty in appointing her to the said post.

The Supreme Court has held that denial of the benefit of the judgement to similarly situated persons amounts to discrimination (1989 (1) ATL (SC) 730).

8. The application is, therefore, allowed and the impugned order dated 19.3.90 is hereby set aside and quashed. The applicant shall be given the benefit of the Judgement of Smt. Nirmal Kumari and her

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seniority be fixed over her juniors in the panel of 1984 and those appointed through the subsequent panels. These directions shall be implemented expeditiously and preferably, within a period of 3 months from the date of communication of this order.

9. There will be no order as to costs.

for distribution
(B.N. DHOUDIYAL) S. (12)
MEMBER(A)

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

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