

1

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2481/2004

New Delhi, this the 13th day of December, 2006

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI N.D. DAYAL, MEMBER (A)**

Krishan Kumar
working as TGT (Social Science)
Jawahar Navodaya Vidyalaya
Mungeshpur, Delhi - 39.

...Applicant

(By Advocate Shri Yogesh Sharma)

Versus

1. The Commissioner
Navodaya Vidyalaya Samiti
A-28, Kailash Colony, Delhi – 48.
2. The Deputy Director (E)
Navodaya Vidyalaya Samiti
A-28, Kailash Colony, Delhi -48.

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Respondents

(By Advocate Shri S.Rajappa)

O R D E R (ORAL)

Shri N.D. Dayal,

We have heard the learned counsel for both sides and perused the pleadings.

2. The applicant is aggrieved that his case was not considered for promotion to the post of PGT (SS) and junior persons have been illegally promoted. As such his case should be considered for promotion as PGT (SS) with all consequential benefits from the date of promotion of the juniors including difference of pay and allowances and by fixing seniority on the basis of date of

appointment as TGT (SS) on all India basis for the purpose of promotion after quashing the impugned order dated 25.7.2003.

3. The respondents have opposed the claim of the applicant in their counter reply to which a rejoinder has been filed.

4. It appears that the applicant was initially posted at Jawahar Navodaya Vidyalaya, Leh, Laddakh (J&K) which is stated to be a hard station and according to him upon completion of two years employees are given choice posting. Therefore, the applicant was transferred to Delhi by order dated 11.7.1996 wherein it is mentioned that he along with others had completed the mandatory tenure and were entitled to transfer TA and other transfer benefits under rules. It is, however, noticeable that the transfer order also states that as per undertaking given, the applicant along with others will have to lose their seniority in the grade maintained by the respective regional offices and will have to reckon their seniority maintained by the regional offices where they are transferred from the date of joining at the new places.

5. The learned counsel for the applicant pointed out that after completing mandatory tenure in a hard station keeping in view the language of the transfer order dated 11.7.1996, the place of choice posting cannot be made subject to the undertaking and bottom seniority. He has drawn attention to a copy of the undertaking at page 14 of the OA to point out that it is applicable in the case of persons covered under regional seniority. Also, in the remarks column against the name of the applicant in the transfer order, no conditions have been laid down as in other cases. Further,

34

S/Shri Mohd. Abutaleb and Sunil Kumar, the persons mentioned at serial No. 14 & 18 of the order dated 13.6.2001 at Annexure A-8 were TGTs and on completion of mandatory tenure in the North East Region, on inter regional transfer, they were also to lose their seniority which was to be reckoned in the grade maintained by the respective regional office where they were transferred. But it is submitted that in their cases seniority has been restored. As such it would be discrimination against the applicant if the respondents were to arbitrarily apply bottom seniority in his case. It is further emphasized that for promotion as PGT, seniority on all India basis is relevant as per length of service and original seniority would not be applicable as it is limited to the region only. A representation made by the applicant on 27.8.2003, pointing out the identical case of two TGT teachers mentioned above who had also given undertaking but promoted as PGT after counting entire service from the date of initial appointment, has brought forwarded no reply.

6. The learned counsel for the respondents has drawn attention to the revised transfer policy dated 12.4.1999 which prescribes a mandatory period of five years tenure before becoming eligible for consideration of inter regional transfer on request. It also specifies that while effecting transfer on request basis an undertaking be obtained keeping in view the restrictions on transfer by the NVS before the employee is relieved. It has been contended that the transfer order is of 1996 as also the undertaking and since there has been no retraction of the same and it is not denied that the inter regional transfer was accepted by the applicant as per terms

7

contained in the transfer order on his own request, the applicant is estopped from making the present claim as the authorities have only acceded to his request in accordance with the rules. The counsel for the respondents has argued that making a bald submission that juniors have been promoted could not establish the validity of the applicant's prayer and it is not known as to on what basis, the two cases included in order dated 13.6.2001 are stated to be of persons who had given undertaking but were still allowed their original seniority.

7. In his rejoinder, the applicant has reiterated the stand already taken in the OA.

8. At the outset, we note that the Hon'ble Supreme Court in **K.P. Sudhakaran & Anr v. State of Kerala & Ors.** reported in (2006) 5 SCC 386 was dealing with a matter wherein the petitioners who were LDCs were transferred on their own request from one district to another. They were given seniority below the junior most LDCs in the district to which they were transferred. For the purpose of promotion to UDC, the seniority list was to be drawn up state-wise. It had been contended that since the promotion to UDC was on state-wise basis, the original seniority should not be affected for the purpose. The Hon'ble Supreme Court, however, while upholding the reduction in seniority in such case of transfer on request, held: -

"The alleged intention behind a provision, cannot be used to defeat the express words of the provision. Once a statutory rule is made, without providing any exceptions, it is not possible to carve out exceptions to such rule, by judicial interpretation. Nor can an exemption from application of a clear and specific rule

be claimed on the ground of hardship or similar reasons. The proviso to Rule 27 (a) of the Rules is categorical and applies to all employees transferred on own request. It does not make distinction between employees whose promotion post is a statewise post and those where the promotion posts are districtwise posts."

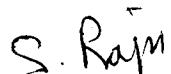
9. The ratio of this judgement would, in our view, be applicable to the present OA. However, there appears to be no material on record to which our attention has been drawn by which it could be clear whether the TGT Teachers at Sl.No.14&18 of the order dated 13.6.2001 at Annexure A-8 were accorded their normal seniority even after having given the undertaking as in the case of the applicant following inter regional transfer on the basis of request to a place of choice. If that be so, it would be neither fair nor just to deny the same benefit to the applicant if he be similarly situated and in accordance with law.

10. This OA is, therefore, partly allowed with directions to the respondents to consider the prayer of the applicant keeping in view the cases of two TGT Teachers at Sl.No.14&18 of order dated 13.6.2001 at Annexure A-8 of the OA and if it is found that in those two cases, despite undertaking, the normal seniority had been accorded and the applicant is found to be similarly circumstanced then the same benefit be extended to him in accordance with law.

No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

/vikas/