

Central Administrative Tribunal
Principal Bench

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OA No. 2493/2004

New Delhi, this the 10th day of December, 2010

Hon'ble Dr. Ramesh Chandra Panda, Member (A)
Hon'ble Dr. Dharam Paul Sharma, Member (J)

Munishwar Sharma,
Mechanic-cum-Caretaker,
Babu Ram Government Sarvodaya Bal Vidyalaya,
Shahdara,
Delhi-110032. ... Applicant

(By Advocate : None)

Versus

1. The Director of Education,
Government of National Capital,
Territory of Delhi,
Old Secretariat,
Delhi.
2. The Chief Secretary,
Government of NCT of Delhi,
I.G.I. Stadium,
New Delhi.
3. The Controller of Accounts,
A&B Block, Vikas Bhawan,
I.P. Estate,
New Delhi.
4. The Principal,
Babu Ram Government Sarvodaya Bal Vidyalaya,
Shahdara,
Delhi-110032. Respondents.

(By Advocate : Shri N.K. Singh for Mrs. Avnish Ahlawat)

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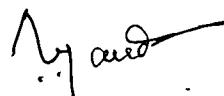
: O R D E R (ORAL) :

**Dr. Ramesh Chandra Panda, Member (A)**

Shri Munishwar Sharma, the Applicant in the present OA has come before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, with following prayers :-

- "(a) to quash the impugned Letter No.DE-47(4)(6)/Mis/CAT/E/A /3705 dated 19.07.2004 issued by Dy. Director of Education Rani Garden, Delhi, read with the Director of Education Order No.DE-1(49)/(7)/96/E-1/PT File/15661-15672 dated 24.10.2000, directing the respondents to rectify the records especially the expression "adhoc" given in remarks column of the order dated 24.10.2000 against the name of the applicant and to treat him as "regular" vide their own order dated 10.04.1987;
- (b) to grant the applicant higher (un-revised) pay scale of Rs.1200-1800 (corresponding to revised pay scale of Rs.4000-100-6000), under "SITU PROMOTION SCHEME", with all the consequential benefits, as has already been granted to the applicant' next junior Shri Laxmi Narain Sharma vide order dated 10.09.2001 issued by the Addl. Director of Education, else this will be discriminatory and violative of Article 14 read with 16/39(d) of the Constitution of India.
- (c) to issue time-bound direction to the respondents to pay arrears which will accrue to the applicant due to the grant of higher pay scale of Rs.4000-100-6000 and interest thereon at the rate of 12% per annum.
- (d) to award cost of this OA and fees paid to the counsel for serving notice; and
- (e) to pass such other order of further orders in favour of the applicant which this Hon'ble Tribunal deems fit and appropriate in the facts and circumstances of this case as well as in the interest of justice."

2. When the case came up on 14.09.2006, Ms. Simran proxy for Mrs. Avnish Ahlawat, learned counsel for



Respondents submitted that an identical issue with regard to the seniority of the Applicant was pending before the Hon'ble High Court of Delhi in **CWP No.4678/2000** (Munishwar Sharma Vs. Directorate of Education) and other **CWP No.6437/2000** (Govt. of NCT Vs. Dhani Ram & Ors.). The judgment, which would be passed by the Hon'ble High Court would have a far reaching consequence while disposing of this matter. Accordingly, it was decided by the Tribunal to wait for the finalization of both the Writ Petitions. Liberty was granted to both the parties to make a mention for hearing after disposal of the Writ Petitions. Hence, the OA was put in *sine die* list.

3. However, it was decided to hear all the OAs pending in the *sine die* list. Accordingly, we heard the case on 19.07.2010, 26.07.2010 and 19.08.2010. On 16.09.2010, we were informed by the proxy counsel for the Respondents that Hon'ble High Court in its order dated 18.08.2009 has allowed the CWP No.4678/2008 and the status of implementation would be reported during the next date of hearing.

4. The following order was passed in the said Writ Petition:-

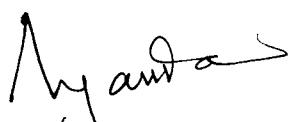
"The Petition is aggrieved by an order dated 3rd November, 1999 passed by the Central Administrative Tribunal, Principal Bench in OA No.195/1996. The Petitioner was appointed as Mechanic-cum-Caretaker



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with the Respondents on an ad-hoc basis sometime in 1970. Recruitment Rules for appointment to the said post were framed sometime in 1971. Pursuant to the promulgation of the Recruitment Rules, regular appointments were made sometime in 1972. The private Respondents were regularly appointed in 1972 but the Petitioner, who had been working since 1970, was regularized by an order dated 10th April, 1987. Thereafter, a further office order was issued by the official Respondents on 10th November, 1987 whereby the date of regularization of the Petitioner was changed from 10th April, 1987 to 18th May, 1970. The effect of the letter dated 10th November, 1987 is that the Petitioner was deemed to have been regularized at least one year prior to the date of regularization of the private Respondents. The order dated 10th November, 1987 was not challenged by anybody. When the seniority list was drawn up on 21st November, 1995, the Petitioner was shown as senior to the private respondents. Feeling aggrieved, they filed an original application before the Tribunal challenging the seniority list. The Tribunal came to the conclusion that since the private Respondents were made regular in 1972 (before the Petitioner was made regular on 10th April, 1987) they should have been shown as senior to the Petitioner. On this basis, the Original Application was allowed. Feeling aggrieved, the Petitioner is now before us challenging the order passed by the Tribunal. We find from a perusal of the record (including the impugned order of the Tribunal) that the Tribunal completely overlooked the order dated 10th November, 1987 passed by the official Respondents whereby the date of regularization of the Petitioner was fixed as 18th May, 1970. If the date of the regularization of the Petitioner is taken as 18th May, 1970 he is obviously senior to the private Respondents who were regularized in 1972. If the date of regularization is not taken into consideration, the other principle that would be applicable is that of continuous officiation. If the continuous officiation principle is taken into consideration, the Petitioner who was working with the official Respondents from 1970 onwards, would rank senior to the private Respondents. Therefore, whichever way the issue is looked, at the Petitioner would rank senior to the private Respondents.

The above being the position and the order dated 10th November, 1987 regularizing the Petitioner with effect from 18th May, 1970 not having been challenged, in our opinion, the Tribunal committed an error in declaring



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the private Respondents as senior to the Petitioner. In view of the error committed by the Tribunal, the impugned order is set aside and it is directed that the seniority of the Petitioner be restored in terms of the impugned seniority list published by the official Respondents on 21st November, 1995. The Petitioner will be entitled to all consequential benefits. The writ petition is allowed."

5. Today, when the case was called out, we were informed by the learned counsel for the Respondents that the Respondents have implemented fully the directions of the Hon'ble High Court of Delhi. Copy of a set of communications date 24.11.2010, 31.12.2009, 4.12.2009 and 16.11.2009 were furnished today which were taken on record. As per the said orders and letters, his seniority was restored w.e.f. 01.05.1984; his pay and retirement benefits have been re-fixed and the arrears have been paid to the Applicant.

6. As the relief(s) sought in this OA have been largely granted to the Applicant in the orders presented before us, the present OA has become infructuous. We dispose of the OA accordingly. No costs.



(Dr. Dharam Paul Sharma)
Member (J)



(Dr. Ramesh Chandra Panda)
Member (A)

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