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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2642 OF 2004

New Delhi, this the 21st day of September, 2005

**HON'BLE JUSTICE SHRI B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI M.K. MISRA, ADMINISTRATIVE MEMBER**

Smt. Gurbax Kaplash W/o Shri Jaswant Singh,
Resident of M-8, Prasad Nagar, New Delhi-110005.

.....Applicant .

(Applicant in person)

VERSUS

1. Delhi Administration through
Chief Secretary, Rajniwas, Delhi.
2. The Secretary of Education
Delhi Administration,
Old Secretariat, Delhi.
3. Municipal Corporation of Delhi,
through its Commissioner,
Town Hall, Delhi.
4. Smt. Sarla Kapoor (Retd. Vice Principal)
A-3/259, Janak Puri, New Delhi-110058.

.....Respondents .

(By Advocates : Ms. Kanika Vadhera for Mrs. Avnish Ahlawat for R-1 & R-2
and Shri S.C. Gupta for R-3, None for R-4)

O R D E R

BY SHRI M.K. MISRA, ADMINISTRATIVE MEMBER :

The applicant – Smt. Gurbax Kaplash submitted a Review Application No.200/2004 with the following prayer for rectifications in the order passed by this Tribunal in OA No.1839/2000:-

- “8.1 Factual errors should be corrected.
- 8.2 My case may be decided on merits.
- 8.3 To issue an appropriate writ or directions to respondents No.1, 2 and 3 to grant the petitioner seniority as Headmistress, above Smt. Sarla Kapoor, Respondent No.4.
- 8.4 That all the consequential financial benefits should be given to the petitioner i.e. whatever financial benefits Smt. Sarla Kapoor and

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other juniors received by being wrongly placed above the petitioner, as Headmistress Selection Grade, Vice Principal, Principal and pensionary benefits. Since all of us are now retired.

8.5 Grant and other relief or reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner and against the respondents.

8.6 To award the petitioner the cost of the case."

2. Vide order dated 29.10.2004, this Tribunal directed, after considering the above RA, in the following manner:-

"Registry is directed to treat this Review Application as an Original Application and allot the fresh number, whereafter notice on OA be issued to the respondents, returnable on 22.12.2004."

3. Accordingly the above Review Application is being treated as Original Applicant with a new number OA 2642/2004 has been allotted.

4. Brief history of the case is that earlier, the applicant filed Original Petition No.T-172/1987 (CW 313/1978), which was decided by this Tribunal on transfer from the Hon'ble High Court of Delhi vide its order dated 17.7.1990 as under:-

"10. While the learned counsel for the respondents No.1 & 2 urged before us that this case is covered by the judgment of the Tribunal in Smt. Surinder Nayyar's case (supra), the petitioner argued that the two cases were different inasmuch as in Smt. Surinder Nayyar's case, the petitioner had not made any representation while she has been regularly taking up the matter with the authorities. The contention of petitioner is not substantiated. In Smt. Surinder Nayyar's case also, the petitioner claimed, as per para 4 of the judgement in that case, that she had been representing for fixation of her seniority since 1960. In the case before us, though the petitioner has stated that she has been submitting her objections to the seniority list, yet copy of not a single representation has been filed (except the legal notice which is dated 9.12.1977) and nowhere in the petition, there is mention of any year or month or date when such a representation was made by her. We, therefore, do not find any difference in regard to the issues involved and the reliefs prayed for as also the grounds of challenge in this case and the case of Smt. Surinder Nayyar (supra).

11. Some of the private respondents, who have filed their replies in this case, have also sought substantive relief in their favour. Needless to say that no such relief can be granted to those respondents in this petition.

12. In view of the above discussion, the petition is devoid of merit and the same is accordingly dismissed...."

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5. Against the aforesaid order of this Tribunal, the applicant had filed RA No.112/1990 in T-172/1987 and this Tribunal vide its order dated 28.9.1990 dismissed the same with the following observations:-

“3. In the instant R.A., the review applicant has mentioned a number of grounds in support of her prayer for review of the judgment. Her main ground is that she had filed a petition and some documents with it on 16.5.90, which do not appear to have been taken into consideration as these are neither available on the file of the case, nor the judgement makes any mention of this petition/documents. The oral arguments in T-172/87 were heard and concluded on 15.5.91 therefore, the petition filed on 16.5.90 and its enclosures could not be considered after the hearing of the case had been concluded. The order sheet of the case does not show that the petitioner was allowed to file any additional documents. The petition dated 16.5.90 also does not show that the documents filed with the petition could not be produced by the petitioner if necessary diligence had been exercised before that date. This civil writ petition, which was the subject matter of T-172/87 came on transfer to the tribunal on 12.10.87 and notice had been issued and served on the petitioner returnable for 16.11.87. From 16.11.87, when the petitioner was represented, and 15.5.90 when the arguments were heard and concluded, no prayer had been made by the petitioner for filing any documents. We are, therefore, of the considered view that this is not a sufficient ground for review of the judgment. The other grounds are either not relevant as they relate to the facts of the case in T.A. 527/85, or seek a reappraisal of the material on record, which is not to be done in a Review Application. We find no error apparent on the fact of the judgement.

4. In view of the above, we find no merit in this Review application, which is hereby rejected.”

6. The aforesaid order was also challenged by the applicant through Special Leave to Appeal (Civil) No.11069/91 before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Supreme Court vide judgement and order dated 28.9.1990.

7. Thereafter another OA 1839/2000 was filed by the applicant and the same was dismissed by this Tribunal vide order dated 11.7.2001 by observing as follows:-

“4. Applicant now contends that respondents have issued a tentative list of Vice Principals vide their letter dated 13.2.97, in which they have disturbed the final seniority list of Head Mastresses dated 6.4.77 and brought down Smt. Sarla Kapoor from Sl. No.14 to between Sl. No.33 and 34. It is further stated that some of Smt. Kapoor seniors in the aforesaid list dated 13.2.97 were shown junior to her in an earlier seniority

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list dated 18.2.88, and on that basis applicant wants her own seniority to be placed above Smt. Sarla Kapoor.

5. Applicant's claim for placement above Smt. Sarla Kapoor in the seniority list of Head Mistresses was specifically considered by the Tribunal and rejected by its order dated 17.7.90. R.A. No.112/90 filed against that order was rejected on 28.9.90, and SLP No.11069/91 filed in the Hon'ble Supreme Court against those orders was likewise rejected on 26.9.91.

6. Thus, in so far as applicant's claims for seniority above Smt. Sarla Kapoor is concerned, the same has been considered and decisively rejected. We are bound absolutely by those decisions and it is now not open to us to readjudicate applicant's claim for seniority above Smt. Sarla Kapoor, even if, as contended by applicant, Smt. Sarla Kapoor's own seniority has been altered relative to certain others.

7. It is also not denied that applicant has retired on superannuation. The OA is dismissed. No costs."

8. The applicant again filed the Review Application no.289/2001 in OA No.1839/2000, which was dismissed by this Tribunal vide order dated 21.8.2001. The applicant thereafter challenged the orders passed by this Tribunal in main OA 1893/2000 dated 11.7.2001 through a Writ Petition No.6081/2001 before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court vide its judgement and order dated 14.10.2003 dismissed the said Writ Petition with liberty to file a Review Application before this Tribunal for the purpose of removal of errors in the order dated 11.7.2001. In the meantime, the applicant filed another Review Application No.363/2003 in T.A. No.172/1987, which was also dismissed as withdrawn vide order dated 1.7.2004.

9. In T-172/1987, the applicant had prayed the following reliefs:-

"(a) to issue a writ of certiorari quashing the impugned seniority list annexure 'E'.

(b) to issue an appropriate writ or directions to respondents 1 to 3 to reframe the seniority list in accordance with law.

(c) to issue an appropriate writ or a direction to respondent 1 to 3 to grant the petitioner the benefit of selection grade of Rs.775-1000 in accordance with the decision of the Government of India as contained in Circular letter No.48-27/71-UTI dated 26-11-1971 and Circular letter No.F 32-132-I (34)/ Gen 71-72 dated 1st December, 1971.

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(d) grant any other relief or reliefs as this Hon'ble Court may deem just and proper in the circumstances of the case in favour of the petitioner and against the respondents.

(e) to award to the petitioner the cost of the writ petition."

10. In OA No.1839 of 2000, the applicant had prayed the following reliefs:-

- "8.1 That the applicant should be made senior to Smt. Sarla Kapoor as Vice Principal.
- 8.2 That all the consequential financial benefits should be given to the Applicant (i.e. whatever financial benefits Smt. Sarla Kapoor received by being wrongly placed above the Applicant, as Headmistress Selection Grade. Vice Principal, Principal and pensionary benefits). Since both of us are now retired.
- 8.3 The fact remains that Smt. Sarla Kapoor was wrongly given Selection Grade of H.M. promoted Vice Principal and then Principal (she was promoted principal on 9.2.98). Later on they brought her down of course AFTER PROTECTING HER FINANCIAL BENEFITS, AGAINST WHICH I HAVE NO GRUDGE. LET HER FINANCIAL BENEFITS BE PROTECTED. But at the same time when she has been brought down from feeder cdr. No. 14 to after Feeder Cdr. 33 (at Sl. No.274) She should be brought down to me i.e. after Feeder Cdr. No.45 (Sl. No. 284.) Because she is junior to me as TGT and as H.M. Middle School. They have already given the same date of appointment as Vice Principal to both of us. Since all of us are retired I will be benefited by way of stepping up.
- 8.4 Grant any other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case in favour of the Petitioner and against the Respondents.
- 8.5 To award the Petitioner the cost of Writ Petition."

11. In nutshell, the facts are that the claim of the applicant is against misplacement of seniority. Petitioner retired as Vice Principal from Govt. Girls Secondary School, Karol Bagh, New Delhi. She joined as Assistant Teacher under Municipal Corporation of Delhi on 2.8.1957 and was promoted as TGT vide order dated 1.8.1959. She also joined the duties of TGT on 8.8.1959. Later on she was promoted as Headmistress, Middle School vide order dated 26.9.1990 and joined the same post on 3.10.1960. The promotion was made on the basis of seniority-cum-fitness. But her seniority in the grade of Headmistress was not

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fixed as per the extant rules. Later on the administration of all Middle School along with the staff under MCD was transferred to Delhi Administration on 1.7.1970. Thereafter seniority lists were prepared and circulated from time to time to candidates for inviting the objections. The final seniority list was circulated on 6.4.1977 which is subject matter of challenge under various OAs of the applicant which stand already decided by this Tribunal. The most important errors, according to the applicant, are as under:-

- “(a) The Tribunal after noting that Smt. Sarla Kapoor had been appointed as Headmistress pursuant to circular dated 23-11-59 and became senior to the applicant even though applicant was appointed as TGT earlier, by its order dated 17-7-90 dismissed the O.A.
- (b) While doing so the Bench held that the seniority in the grade of TGT could not over ride the seniority to be fixed on the basis of appointment to the higher grade of the Headmistress.
- (c) If the Petitioner had any grievance against the promotion of her alleged juniors to the post of HM, which promotion took place in 1959-60, she should have agitated the matter at that time or within a reasonable period thereafter.

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4.28. Very honbly, a few errors on the face of Judgment Order in case of Smt. Surinder Nayyar's case are pointed out :-

- (i) Page 3 (line 5)
- (ii) Page 4, Para 4 (line 7)
- (iii) Page 4, Para 4 (line 10)
- (iv) Page 5, Para 6 (line 11)
- (v) Page 6, (line 26) – Respondents 4 to 17.
- (vi) Page 6, (line 4)
- (vii) Page 6, Para 8 (line 2)
- (viii) Page 6, Para 8 (last line)

As there is no respondent No.17 in her Petition, Hon'ble Tribunal by mentioning "Respondent No. 17" has mis-ordered comments against individual respondents. I believe that THIS ERROR WAS MADE BY THE BENCH, BECAUSE RESPONDENTS IN THAT CASE MISLED THE COURT, BY MENTIONING AGAIN AND AGAIN "RESPONDENT NO. 4 TO 17/ 5 TO 17". This case they were fighting as

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hedging against my case and in their mind was my case which had 17 respondents.

(b) In the Judgement Order in my case (Annex 'D' – page 44), in para 7 it is mentioned, "We find from the impugned seniority list that Respondent No.4,5,6,8 and 9 appear to have been appointed as HM in pursuance of Circular dated 23-11-59." Although Respondent No.4 and Respondent No. 9 are wrongly included here, but in total 5 respondents are shown covered under Circular dated 23-11-59. But in Surinder Nayyar's case Judgement Order at page 6, Para 8 (last but one line), it is mentioned, "It is also not under dispute that respondents 5 to 17 had applied against the notification issued by the MCD in regard to filling up the posts of HMs in the schools located in villages of Delhi." Here Smt. Sarla Kapoor is rightly excluded.

But Smt. Surinder Nayyar's case against 7 respondents on earlier grounds is not considered at all and these have also been wrongly included under Circular dated 23-11-59.

Surprisingly in Smt. Surinder Nayyar's case, except Circular dated 23-11-59, no other issue is discussed. Whereas in my case, Hon'ble Tribunal states that all the issues have come up in Smt. Surinder Nayyar's case."

12. We have heard the applicant in person through her husband. It is observed that the points raised above are nothing but only repetition of the claim already made in RA No.289/2001 in OA NO.1839/2000. This RA has been decided by this Tribunal vide order dated 21.8.2001 in the following manner:-

"Perused the RA.

2. None of the grounds contained therein bring it within the scope and ambit of Section 22(3)(f) A.T.Act read with Order 47 Rule 1 CPC under which alone any order/decision of the Tribunal can be reviewed.

3. The RA is rejected."

13. We also observe that the applicant approached the Hon'ble Delhi High Court against the decision of this Tribunal in the above RA through a Writ Petition No. 6081/2001 and the Hon'ble Delhi High Court vide order dated 14.10.2003 dismissed the above said Writ Petition and upheld the order of this Tribunal in the above Review Application No.289/2001 in OA 1839/2000. Since the matter stands already adjudicated and finalized and the present RA 200/2004 in OA No.1839/2000, which has been treated by this Tribunal as a fresh OA by way of allotting a new number i.e. OA No.2642/2004 is nothing but the

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repetition and reiteration of the earlier prayer. Therefore, the doctrines of *res judicata* and *estoppel* are applicable in this case. In the case of *C. Subramanian v. Director of Accounts (Postal) Tamil Nadu Circle & Anr.*, 1990 (1) SLJ 77 (CAT Madrass), this Tribunal has held that it is not possible to entertain application for the same relief merely on the basis that the applicant was able to raise a new point. Once an application is filed he is expected to urge all the points in support of that for getting that relief and if he omits to raise a point and the application is dismissed on merits, he cannot seek to raise a new point and file a fresh application for the same relief. If such successive applicants are allowed for the same relief, then a person can go on filing successive applications raising one point or the other on each occasion and this will lead to multiplicity of litigation and there will be no finality to any proceedings before this Tribunal. The Hon'ble Supreme Court in the case of *Direct Recruit Class II Engg. Officers Assocn v. State of Maharashtra*, AIR 1990 SC 1607, has held that the binding character of judgements of courts of competent jurisdiction is in essence a part of rule of law on which the administration of justice, so much emphasized by the Constitution, is founded and a judgement of the High Court under Art. 226 passed after a hearing on the merits must bind the parties till set aside in appeal as provided by the Constitution and cannot be permitted to be circumvented by a petition under Art. 32, an attempted change in the form of petition or the grounds cannot be allowed to defeat the plea.

14. The upshot of the above discussion is that the RA/OA is sans merit and it is, therefore, dismissed with no order as to costs.


 (M.K. MISRA)
 ADMINISTRATIVE MEMBER

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 (B. PANIGRAHI)
 CHAIRMAN