

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 592/1993

Date of decision: 03.06.1993

Smt. Adarsh Malhotra

...Petitioner

Versus

Delhi Administration & Another

...Respondents

For the Petitioner

...Shri G.D. Gupta, Counsel

For the Respondents

...Shri Vinay Sabharwal, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. S.R. ADIGE, MEMBER (A)

1. To be referred to the Reporters or not?

JUDGMENT (ORAL)
(of the Bench delivered by Hon'ble Mr. Justice
S.K. Dhaon, Vice Chairman)

The Staff Selection Board recommended a panel for making appointments to the post of PGT (Commerce). A Board had been constituted for the vacancies which were in existence during the current year 1984-85 and for the other likely vacancies. Amongst others, it considered one Smt. Sneh Prabha as a suitable candidate to be empanelled. Her name was placed at S.No.16. The petitioner was also found suitable and was placed at S.No.28. For some reason or the other, appointment could not be given to Smt. Sneh Prabha. She came to this Tribunal by means of an original application which registered as OA 842/1991. On 08.01.1993 this Tribunal allowed the said OA and, in substance, issued a direction to the respondents therein to issue a letter of appointment in her favour. In this OA, in substance, the prayer is that the petitioner should be placed at par with her straightaway.

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2. Apart from the usual prayer that directions or orders may be issued, the main prayers are:-

"(1) Declaring 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;

(ii) 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".

3. The relevant portion of the recommendation of the Staff Selection Board runs:

"The Staff Selection Board was informed that the academic year 1984-85 has just begun and the actual number of vacancies likely in the current academic year can not be specified. However, as quite a few schools are being upgraded and the post fixation has also to be done, the size of the panel approved may be in consonance with the requirement of the past few years in this subject and in anticipation of the vacancies likely to arise on that basis. The SSB was further informed that so far Commerce (Generals) has become shortage category as the subject being new at the stream number of candidates available for departmental promotions filled up by direct recruitment.

The SBB after interviewing all the candidates recommended that the following candidates be kept on the panel for appointment against vacancies reported from time to time in the order of merit assigned to them below".

49

4. This Tribunal in the case of Smt. Sneh Prabha OA 482/1991 decided on 08.01.1993 took into consideration the notification issued on 8.2.1992 by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms and also the decision of the Supreme Court in Prem Parkash Vs. Union of India & Others, AIR 1984 SC page 1831. We may indicate that the contents of the said notification issued by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms have been quoted in extenso in paragraph 15 of the judgment in Prem Prakash's case. In substance, this Tribunal took the view that the recommendation of the Staff Selection Board did not perish by lapse of time and it continued to operate till the panel prepared by the Board was exhausted. We are bound by the decision of this Tribunal in Smt. Sneh Prabha's case as it is a judgment given by a Bench of coordinate jurisdiction. On our part, we see no reason to take a view different from that case. However, the learned counsel for the respondents has strongly urged that the view taken by this Tribunal in Sneh Prabha's case is not correct as it is not in consonance with the decision in Prem Parkash's case. The argument is that the Supreme Court in Prem Parkash's case held that the aforesaid notification could be applicable only to cases where there were declared number of vacancies. The argument proceeds that since in the instant case, the Board had not before it any declared number of vacancies, the question of appointments being made from the panel recommended by the Board and in accordance with the said notification did not arise.

5. Before examining as to what the Supreme Court really held, let us revert to the proceedings of the Staff Selection Board and read again the relevant portion as extracted above. The Board took notice of the fact that the actual number of vacancies likely to occur in the current academic year had not been specified. It felt that, in view of the fact that few schools had been upgraded, the size of the panel should be in consonance with the size of the past few years and in anticipation of the vacancies likely to arise. It, therefore, recommended that the candidates found suitable by it should be kept in the panel for appointment

from time to time in the year of merit assigned to them.

6. The notification of 8.2.1992 itself says that normally in the case of direct recruitment, a list of selected candidates is prepared on the basis of the number of vacancies. The expression "number of vacancies" in the context and setting of the notification does not mean a fixed number of vacancies. The idea of an approximate number is not excluded. The emphasis is that a limitless number of candidates should not be selected for empanelment. It is implicit in the notification that there should be approximate or rational relationship between the number of vacancies and the number of candidates selected for empanelment. The application of the terms of notification ~~of~~ ^{to} an abnormal situation, as adverted to by the Board, is neither expressly ~~nor~~ impliedly excluded. In our opinion, the Supreme Court in Prem Prakash's case has not taken a different view.

7. The respondents admit that the Delhi Administration has accepted the decision of this Tribunal in the Sneh Prabha's case. They also admit that the said decision has been implemented in the case of Smt. Sneh Prabha and she has been given an appointment. We feel that it will not be fair on the part of the Delhi Administration to turn ~~down~~ ^{round} and say that even though the petitioner and Smt. Sneh Prabha sailed in the same boat and stand on the same footing, yet, she (the petitioner) will not be given an appointment in accordance with the decision of this Tribunal.

8. Learned counsel for the respondents next urged that, in any view of the matter, this application is barred by time. On the question of limitation, the averments made in this application are these. A somewhat similar controversy arose in the case of Smt. Nirmal Kumari and Others before this Tribunal. After coming to know of the judgment of the Tribunal in Nirmal Kumari's case, the petitioner on 04.07.92 made a representation. Earlier too, she had made representations on 30.12.1991 and 15.03.1992. She

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acquired knowledge of the judgment of this Tribunal in the case of Smt. Sneh Prabha on 08.01.1993. Her case is identical to that of Smt. Sneh Prabha.

9. We have already indicated that the petitioner and Smt. Sneh Prabha are the recommendees of the same Board and their names appeared in the same panel for the same type of PGT course. We see no reason as to why the petitioner should be deprived of the benefit of this Tribunal's judgment in Sneh Prabha's case on the technical plea of limitation. If a period of one year is counted from the date of expiry of a period of six months from 30.12.91, ~~w~~ this application will be then within time. Even if there be some delay, this in our opinion is a fit case where the same should be condoned.

10. The petition succeeds and is allowed. Respondents are directed to give a suitable appointment to the petitioner in accordance with the recommendations of the Staff Selection Board abovementioned. Her terms of appointment would be the same as that of Smt. Sneh Prabha.

11. There will be no order as to costs.

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(S.R. ADIGE)
MEMBER (A)
03.06.1993

S.K.D
(S.K. DHAON)
VICE CHAIRMAN
03.06.1993

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