

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.981 OF 1999

ALLAHABAD THIS THE 2nd DAY OF November, 2004

HON'BLE MRS. MEERA CHHIBBER, Member-J

HON'BLE MR. S. C. CHAUBE, MEMBER-A

Ambika Prasad Mishra,

son of Sri Kedar Nath Mishra,

posted as Post Graduate Teacher (Biology),

Jawahar Navodaya Vidyalaya, Mahuar,

Kasara, District-Mau. (U.P.).

. Applicant

(By Advocate Shri A.C. Misra)

Versus

1. Union of India,
through Navodaya Vidyalaya Samiti,
An Autonomous Organisation of Ministry of
Human Resource Development, Department
Education, A-39, Kailash Colony,
New Delhi-48 through its Director.
2. Deputy Director,
Navodaya Vidyalaya Samiti, Lucknow,
Region, B-10, Sector-C, Aliganj,
Lucknow.

. Respondents

(By Advocate Sri V. Swaroop)



O R D E R

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

By this O.A. applicant has sought the following reliefs:-

"(i) to direct the respondent to correct the applicant's seniority position in the seniority list dated 22.12.1995 as per Navodaya Vidyalaya Samiti Rules, 1989.

(ii) To direct the respondents to consider applicant's claim for promotion to the post of Vice-Principal as per revised seniority position, and further promotions.

(iii) To grant any other and further relief which this Tribunal deems fit and proper in the circumstances of the case.

(iv) To grant the cost of litigation in favour of the applicant against the respondents."

2. The brief facts as alleged by applicant are that he was appointed as PGT(Bio) in the scale of 1640-2900/- in Kendriya Vidyalaya Sangathan at Ranchi where he worked upto 29.05.1989. On 31.05.1989 he joined Navodaya Vidyalaya Samiti on deputation in same pay scale 1640-2900/- as PGT(Bio). In April 1993 he was proposed to be absorbed permanently in NVS w.e.f. 01.09.1992 and he was further informed categorically that his absorption will be governed by absorption rules adopted by samiti on 04.07.1989. In case, ^{he is} he is willing should resign w.e.f. 01.09.1992 from his parent department (Page 32).

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3. Applicant gave his resignation and was absorbed in Navodaya Vidyalaya Samiti. Navodaya Vidyalaya Simiti issued tentative list of PGTs on 10.03.1995 in which applicant's ^{seniority 12} ~~seniority~~ was shown from the date of absorption so he gave objection but without considering his objections, final seniority list was issued on 22.12.1999. It is this seniority which has been challenged by the applicant as it is submitted by him that his seniority should have been in accordance with the absorption rules i.e. from the date he was holding the post on deputation and not from the date of absorption.

4. Respondents took preliminary objection to the maintainability of the O.A. on the ground that it was barred by limitation and he has not impleaded those persons who are likely to be affected in case his seniority is changed at this stage. On merits they submitted that applicant's seniority has rightly been fixed w.e.f. the date of his absorption w.e.f. 01.02.1994 by fixing his inter-se seniority among that batch as per clarification dated 15.07.1994. He relied on following judgments:-

1. AIR 1975 S.C. 1269.
2. 1984 (3) SCC 36.
3. 1998 (2) SCC 523.
4. 1998 (6) SCC 720.
5. 1995 SCC(L&S)1148.
6. 1996 (2) SCC 9.

JS

5. We have heard both the counsel and perused the pleadings. Counsel for the applicant relied on judgment given by Hon'ble High Court of Punjab and Haryana wherein relief was granted to Karamjit G(SS) in similar circumstances.

6. Perusal of memorandum dated April 1993 shows that applicant was informed in clear terms that his absorption would be governed by the rules of July 1989 and in case he is willing, he should resign from his parent organisation. Now perusal of Rules ^{of} 1989 make it very clear how applicant's seniority was to be fixed.

This for ready reference reads as under:-

"FIXATION OF SENIORITY"

The seniority of the person absorbed permanently in the NVS in the grade in which he is absorbed, shall be counted with effect from the date of his absorption in the Samiti. In case, however, such a person was already holding a post in the same or equivalent grade on regular basis in his parent department, he will be entitled to the benefits of such regular service in the grade for fixation of his seniority. In the latter case the officer will be given seniority from:-

- the date from which he has been holding the post on deputation, or
- the date from which he has been appointed on regular basis to the same or equivalent grade in his parent department.
- whichever is later.

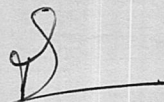
The Seniority fixed in the above manner will not, however, effect the regular promotions. The seniority fixed in the Samiti will, therefore, be operative only in filling up of vacancies in the higher grade occurring after the date of absorption."



7. It is thus, clear that as per these rules applicant was entitled to get his seniority from the date he was taken on deputation and not from the date of absorption. The contention of respondents that his seniority was fixed in accordance with clarification dated 15.07.1994 cannot be accepted because in the offer of absorption, applicant was informed in clear terms that his seniority would be governed by 1989 rules on the basis of which he altered his position by giving resignation from his parent organisation, therefore, respondents cannot now deny him the benefit of 1989 rules and they are ^{also B} bound by their own terms and conditions. Moreover, the clarification dated 15.07.1994 was not even in existence when applicant was absorbed, therefore, the clarification cannot be applied in the case of applicant. Therefore, according to us applicant would be entitled to fixation of his seniority from the date when he was taken on deputation in Navodaya Vidyalaya Samiti i.e. 31.05.1989.

8. The preliminary objections taken by respondent are rejected because this is a case where applicant does not have lis of seniority with any particular person but his case is based on correct application of rules.

9. We are supported by Hon'ble Supreme Court on this point in the case of A. Janardhana Vs. U.D.I. reported in 1983(3) SCC 601 wherein it was held as



under by Hon'ble Supreme Court.

"In this case, appellant does not claim seniority over any particular individual in the background of any particular face controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing-up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus the relief is claimed against the Union

Government and not against any particular individual. In this background, we consider it unnecessary to have all direct-recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Railway, Secundrabad & Anr. etc. Vs A.V.R. Sidhanti and Ors. etc. Repealing a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that

the respondents (Original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating to seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by anyone individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negative."


10. Moreover it is not a case where applicant was sleeping over his rights. He gave objection immediately after provisional seniority list was issued and raised the issue subsequently also at the time when P.G.T.s were being considered for Principal. ^{the post of P}

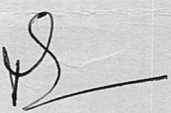


Since, his seniority has been fixed wrongly and contrary to the rules which were in existence. We are passing the following orders keeping in view the equities and rights of other persons as well.

Respondents are directed to fix:-

1. Applicant's seniority as P.G.T.(Bio) from the date he was taken on deputation in NVS in accordance with NVS Rules of 1989, (regarding fixation of seniority) under intimation to him.
2. Since applicant did not approach the court immediately after 1995 and other persons have already been promoted as Principal who are not impleaded by applicant, their promotions would not be affected.
3. If ~~on~~ refixation of seniority, it reveals the applicant's juniors have already been promoted as Principal ~~and~~ ^{then} applicant ~~should~~ ^{he} be considered for the next post of Principal in accordance with rules.
4. This exercise shall be completed within three months from the date of receipt of a copy of this order.
11. With the above directions, this O.A. is disposed off with no order as to costs.


Member-A


Member-J