

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 4th day of December, 2001.

Original Application No. 1170 of 1999.

CURIA :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

Dr. S.R.P. Upadhyay, Education Officer,
Resident of 14, Hargovind Nagar,
(Behind Ransal Marble)
Pilibhit Road, Bareilly (U.P.),
at present at 2/89, Kotla House,
Khandari Crossing, Agra (U.P.)

(Applicant In Person)

..... Applicant

Versus

1. Ministry of Labour, through its Secretary, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Central Board of workers Education Through its Director, Near WRCE Gate, North Amba Ghari Road, Nagpur (Maharashtra).
3. Central Board for workers Education, Through its Regional Director, Paradise 24A, Model Town Near, Sports Stadium, Bareilly U.P.
4. Central Board of workers Education, Through its Regional Director, 2/89, Kotla House, Khandari Crossing, Civil Lines, Agra.
5. Central Board for workers Education, Through its Zonal Director, Building Centre, Sarai Kale Khan, East Nizamuddin, New Delhi.

(Sri D.S. Shukla, Advocate)

..... Respondents

ORDER (oral)

By Hon'ble Mr. S Dayal, A.M.

This application has been filed for a direction to fix the respondents to the applicant's seniority with effect

from the date of his initial appointment i.e. dated 21-7-1978 and not from the date of confirmation. The applicant also seeks to set aside the order dated 30-1-92 and declare the applicant as confirmed w.e.f. 20-7-1980. The applicant seeks promotion to the vacant post of Education Officer, Smt. S. Badhwa. The applicant also seeks direction to the respondents to expunge the A.C.R. relating to 1993 and 1996.

2. The case of the applicant is that he was appointed as Education Officer by order dated 21-7-1978 and completed probation period satisfactorily w.e.f. 20-7-1980. He was appointed substantively against the permanent post of Education Officer w.e.f. 30-1-1992 which he was informed by order dated 3-12-1992. He claims that his seniority fixed on the basis of substantive appointment on 30-1-1992 is contrary to principle of law and his seniority should have been fixed w.e.f. 20-7-1980 and he should have been granted promotion on that basis.

3. Learned counsel for the respondents in response to the claim of the applicant for seniority has drawn our attention to his counter reply to which R-II is the U.M. of Department of Personnel, Personnel Grievances and Pensions No.2001/5/90-Estt(D) dated 4-11-1992. The U.M. provides that the General Principles of seniority contained in MHA OM No.9/11/55-RPS dated 22-12-1995 was that seniority follows confirmation and that permanent officers in each grade who were officiating ~~in~~ shall rank superior to those who were officiating in that grade. The said General Principles on the basis of judicial pronouncement was changed to the effect that seniority was to be delinked with confirmation and would be determined by the order of merit indicated at the time of initial appointment

and not according to the date of his confirmation. These orders were, however, to take effect from the date of issue of I.M. i.e. w.e.f. 4-11-1992. It was provided that the seniority already determined according to the existing principles on the date of issue of these orders was not to be reopened. The applicant's order of confirmation was passed on 15-10-1992 and the applicant was confirmed against that permanent post of Education Officer w.e.f. 30-1-1992. we have examined the prayer of the applicant for seniority w.e.f. 21-7-1978 on the basis of his date of appointment as Education Officer.

4. He has also claimed that rank in the seniority list of Education Officer as on 15-3-1995 should have been within 1st five instead of placing him at Serial No.48 of the same list. we find that the principles laid down in the aforesaid letter of the department of Personnel dated 4-11-1992 ^{is not applicable and his seniority} ¹ ~~has been determined on the basis of his confirmation~~ ¹ w.e.f. 30-1-1992. Since this is prior to the ~~condition~~ coming into effect of the new guidelines i.e. 4-11-1992, we find that there is no ground for the applicant for challenging the said seniority. we find that his juniors were confirmed before his date of confirmation and on that count also his seniority in the seniority list dated 15-3-1995 is in order.

5. As far as the promotion of the applicant to the next higher post of Education Officer Selection Grade is concerned, the applicant was entitled to the same on the basis of his seniority list as drawn as on 15-3-1995. It is not clear whether his name for promotion to Education Officer, Selection Grade came within the zone of consideration till date and whether the applicant was considered for promotion to Education Officer Selection Grade after having been confirmed after 30-1-1992.

The applicant has raised another issue with regard to his promotion and expunction of adverse remarks in his ACR for the year, 1993 and 1996. The adverse remarks in his confidential report for the period ending 31-1-1993 is as follows:-

"The officer does not maintain cordial relations with his colleagues/management/trade union officials/workers, but only relations of ordinary nature maintained by him.

An intelligent officer, with negative attitude".

6. His representation was considered but not accepted by the respondents. we find that first paragraph of the remarks extracted above of maintaining of relation of ordinary nature cannot be construed to be adverse at all. The same are, therefore, to be disregarded in considering the case of the applicant for promotion. As regards the adverse remarks for 1996, the adverse remark is specific with regard to not proceeding on tour in January, 1996 and non-achievement of target allotted to him. The representation of the applicant had been considered. The applicant has not been able to show whether he has represented against the adverse remarks of 1996 and, therefore, his prayer for disregarding the remarks for the period ending 31-1-1996 cannot be allowed.

7. In effect the respondents are directed to see whether the applicant came within the zone of consideration for promotion to the post of Education Officer Selection Grade on the basis of the seniority as according to him after his confirmation w.e.f. 30-1-1992 and if it has not been so considered, the respondents shall consider him for grant of the post of Education Officer Selection Grade within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs.

Ratneshwar *Sharma*
Member (J) Member (A)

Dube/