

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK

ORIGINAL APPLICATION NO.409 OF 2003
Cuttack this the 18th day of Feb. 2005

Smt. Manorama Bakshi ... Applicant(s)

- VERSUS -

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Y
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Y

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOR)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.409 OF 2003
Cuttack this the 18th day of Feb. 2005

CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R. MOHANTY, MEMBER(JUDICIAL)

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Smt. Manorama Bakshi, aged about 46 years,
W/o. Sri Brajabandhu Biswasray, at present
working as Post Graduate Teacher in Jawahar
Navodaya Vidyalaya for Keonjhar District,
At/PO-Betanati, Dist-Keonjhar, Orissa

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Applicant

By the Advocates

M/s. P.K. Panda
S.Ghose

- VERSUS -

1. Union of India represented through the Secretary, Ministry of Human Resources Development, Department of Education, Shastri Bhawan, New Delhi
2. Commissioner, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P. Estate, New Delhi
3. The Deputy Director (Personnel), Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P. Estate, New Delhi
4. The Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, 160, Zone-II, M.P.Nagar, Bhopal, Madhya Pradesh
5. The Asst. Director, Sub-Regional Office, Navodaya Vidyalaya Samiti, Near Govt. Girls' High School Unit-VI, Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

Mr. U.B. Mohapatra, SSC
Mr. A.K. Bose (Res.4)

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Smt. Manorama Bakshi (applicant) has filed this Original Application challenging the order No.22-1/2003 NVS(Pers.) dated 9.5.2003 (Annexure-3) passed by the Deputy Director (Personnel), Navodaya Vidyalaya Samiti (in short Samiti) (Res. No.3) with regard to promotion of Post Graduate Teachers (in short P.G.T.).

[Signature]

to the grade of Vice-Principal in the Samiti in the scale of Rs.7500-12,000/-. She has, in the circumstances, prayed for a direction to the Respondents to consider her case for promotion to the grade of Vice Principal with effect from the date her juniors have been so promoted.

3. The case of the applicant, in short, is that she joined Navodaya Vidyalaya, Cuttack on deputation from the State Government of Orissa with effect from 07.11.1986 and that she was permanently absorbed in the Samiti with effect from 1.5.1989 vide order dated 16.2.1991 (Annexure-1). She has, therefore, submitted that for all purposes she became the permanent employee of the Samiti from that date, i.e., 16.12.91. Thereafter she was appointed as Post Graduate Teacher (in short P.G.T.) with effect from 18.5.1989. But the Samiti published a tentative seniority list of P.G.Ts, wherein the applicant was shown to have joined as P.G.T. with effect from 6.6.1991 instead of 18.5.89, as a result of which, she was shown at a place at Sl.No.398, which was much below her entitlement. The applicant submitted repeated representations to correct the seniority list, but without any effect. Finding no other way she had approached the Tribunal in O.A. 628/01, which is pending before this Tribunal. Further, that because of this error in the seniority list, when the Samiti prepared a list of P.G.T.s for promotion to the grade of Vice Principal in the scale of Rs.7500-12,000/-, her name did not find place in that list although, persons who had joined later than her in the

grade of P.G.T. had been given promotion. Thus, she was not considered for promotion although eligible. She has, therefore, alleged that the Respondents have discriminated her in the matter of promotion to the grade of Vice Principal and thereby violated the provisions of Articles 14 and 16 of the Constitution.

4. The Respondents have contested the O.A. by filing a counter. While admitting the facts of the case, they have submitted that the present O.A. is liable to be dismissed for the reasons that the O.A. 628/01 is subjudice with similar issue. We have also heard O.A. No.628/01 and we propose to dispose of the present O.A. after giving our findings on the allegations made by the applicant in this O.A.

5. It is the case of the Respondents that the applicant was absorbed as Trained Graduate Teacher (in short T.G.T.) (Math) on 1.5.1989 vide order dated 16.2.1991. After her absorption, the applicant, in response to an open advertisement applied for appointment on deputation to the post of P.G.T.(Math) post and she was selected to that post on deputation basis. Thereafter, the Respondents-Department promulgated recruitment rules called Navodaya Vidyalaya Samiti (Recruitment) Rules,1991 in respect of Teachers with provision for initial constitution of the service. By virtue of the Recruitment Rules of 1991 all the Teachers including the applicant, who were working on deputation basis were taken on permanent basis to the respective posts of the Teachers (subject to their giving consent) and as per the provision made in the recruitment rules, they were given

the date of regular appointment in the post from the date preceding the date of notification of those rules. It is in these circumstances that the applicant's appointment as P.G.T. on permanent basis has been shown as 6.6.1991 and she has been granted seniority in that grade accordingly.

6. We have heard the learned counsel for both the parties and have also perused the records placed before us.

7. The sole issue to be answered in this O.A. is whether the date of permanent absorption of the applicant should be reckoned from 18.5.1989 or from 2.6.1991 or from 6.6.1991. It is not in dispute that the applicant was recruited on deputation basis from the State Government of Orissa as T.G.T.(Math) with effect from 18.5.1989. Subsequently, she was absorbed as T.G.T. with effect from 18.5.1989. Thereafter, she was appointed as P.G.T.(Math) Teacher, first on deputation basis with effect from 18.5.1989. Later on, with the promulgation of the Navodaya Vidyalaya Samiti (Recruitment) Rules, 1991, in terms of Rule-2(ii) thereof, her date of permanent absorption as P.G.T.(Math) was shown as 6.6.1991. For the sake clarity, the said rules reads as under :

" All persons absorbed on a lower post as per the absorption rules of the Samiti and appointed on a higher post on deputation basis on the basis of a prescribed selection procedure shall be deemed to have joined the higher post on regular basis on the date of preceding the date of notification of these rules!"

As the notification was issued on 7.7.1991,

in terms of the rule quoted above, she was given the date of absorption to the higher post, i.e., P.G.T.(Math) on regular basis from the date preceding the date of notification of those rules and as the rules were notified on 7.6.1991, she could not have been given the date of regular appointment as P.G.T.(Math) on any earlier date.

8. We have perused the seniority list of P.G.T.(Math) Group, which was furnished along with the O.A.No. 628/01 and we find that the seniority list of P.G.T. as on 31.3.1994 was prepared strictly according to the principles of length of service and accordingly, the name of the applicant was placed at Sl.No.400, her date of appointment being 6.6.1991. Her challenge to the decision of the Respondents to absorb P.G.Teachers with effect from 6.6.1991, i.e., one day before the date of promulgation of the recruitment rules on the ground of arbitrariness is without merit because the law in this regard has already been laid down by the Apex Court in the case of Allem Longkumar v. Medokerhe Terhuja, 1999 SCC (L&S) 627, as follows:

"Nevertheless, if the Cabinet has taken a specific decision, looking to the special circumstances in a given case, to absorb the appellant w.e.f. 1.11.1978, and that decision is backed by appropriate recommendation from the department concerned setting out all the circumstances in which the proposal is made, the decision cannot be called arbitrary or unreasonable."

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9. It reveals further that 19 more Teachers have been given the date of absorption from 6.6.1991, of them six persons are placed above the applicant and 13 below her. Although it is not the case of the applicant that she should have been placed above those six teachers, we feel it necessary that the Respondents should disclose to the applicant the principles, according to which the inter se seniority position of this group of PGTs, who were given date of regular absorption as 6.6.1991, was determined. Once this position is clarified, we are of the considered view that the grievance of the applicant would be met squarely and fairly. We order accordingly.

10. Except to the extent as observed above, we see no error committed by the Respondents in showing the date of absorption of the applicant with effect from 6.6.1991 as P.G.T.(Math) and her claim to reckon seniority from 8.5.1989 has no basis, because appointment as T.G.T.(Math) and P.G.T. (Math) are two distinct recruitment aspects having no continuity in service for the purpose of fixation of seniority. In other words, for the purpose of determining inter se seniority in the grade of TGT/PGT, the length of continuous service in the respective grade alone will determine the seniority position of a Teacher. That being the principle governing the fixation of seniority of Teachers, this O.A. is devoid of merit, except to the extent discussed at paragraph 9 above and accordingly, the same is disposed of, leaving the parties to bear their own costs.

(M.R.MOHANTY) 18/02/05
JUDICIAL MEMBER

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Subas
(B.N.SOM)
VICE-CHAIRMAN