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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.218 OF 2008

Cuttack this the 31st day of March, 2011

Upendranath Paramguru...Applicant

-VERSUS-

Commissioner, Kendriya Vidyalaya Sangathan & Ors. ...Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., PB, New Delhi or not ?


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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ORIGINAL APPLICATION NO.218 OF 2008
Cuttack this the 31st day of March, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

Upendranath Paramguru, aged about 49 years, S/o. late Shyamsundar Panda, At-Biridihi,
PO-Salajharia, PS-Khandapara, Dist-Nayagarh at present working as Trained Graduate
Teacher of Kendriya Vidyalaya, Sambalpur

...Applicant

By the Advocates:M/s.Umakanta Sahoo & S.Dhal
-VERSUS-

1. Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016
2. Assistant Commissioner (Academic), Kendriya Vidyalaya Sangathan, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110016
3. Hari Charan Prusty, aged about 54 years at present works a Post Graduate Teacher (Eng.) of Kendriya Vidyalaya, Bandhamunda, At/PO-Bandhamunda, Dist-Sundargarh

...Respondents

By the Advocates:M/s.H.Tripathy, P.K.Mohanty & P.K.Sahu

ORDER

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:

1. Applicant is presently working as Trained Graduate Teacher (In short T.G.T.) under the Respondent-Institution. His grievance is that vide Annexure-A/1 dated 16.11.2005, he had been promoted to the grade of Post Graduate Teacher (Eng.) (in short P.G.T.) and joined in the promoted post at Kendriya Vidyalaya, Jharsuguda on 28.11.2005. While continuing as such, he was issued with a notice dated 28.8.2006 (Annexure-A/2) asking him to show cause as to why he should not be reverted from the post of P.G.T.(Eng.) to the post of T.G.T.(Eng.) on the ground that his promotion to P.G.T.(Eng.) was based on wrong seniority. In response to this, the applicant submitted

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his representation dated 7.9.2006 (Annexure-A/3) stating therein that Shri H.C.Prusty (Respondent No.3) though is junior to him had been shown senior in the provisional seniority list of 1988 which has since been corrected in the seniority list of 2002 and 2004. According to applicant, the seniority list of 2004 having not been disputed by anyone including Shri H.C.Prusty (Res. No.3) who is stated to be his senior, in view of his joining the post of T.G.T. later than the applicant, the seniority list published in 2004 should be maintained. While the matter stood thus, vide Memorandum dated 13/14.12.2006 (Annexure-A/6) reverting the applicant to the post of T.G.T(Eng.) having been issued, the applicant ventilated his grievance before Respondent No.1 vide his representation dated 16.1.2007 (Annexure-A/7) praying therein for cancellation of the reversion order, followed by another representation dated 4.4.2008 (Annexure-A/9). It reveals from the record that vide Annexure-A/8 dated 4.4.2008, the applicant has been promoted to the post of P.G.T. (Eng), being assigned seniority No.353A against Sl.No.99 vis-à-vis Shri H.C.Prusty (Res.No.3) 346 against Sl.No.97. The further representation dated 11.4.2008 having not been yielded any fruitful result, the applicant has moved this Tribunal in the present Original Application seeking the following relief:

- i) To admit and allow this Original Application;
- ii) To set aside the impugned order of promotion as passed on 04.04.2008 under Annexure-A/8 and also pleased to quash the reversion order under Annexure-A/6 issued by the Respondent No.2 in the interest of justice;
- iii) To allow this petitioner to join at Kendriya Vidyalaya, Jharsuguda and his promotion may please be effected since 28.11.2005 as well as his seniority as in the order of promotion under Annexure-A/1.
- iv) To pass any other appropriate order(s) as may be deemed fit and proper in the facts and circumstances of the case.

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2. Respondent-K.V.Sangathan have filed their counter opposing the prayer of the applicant. They have not disputed the factual aspect of the matter. It has been submitted that as per provisional common all India seniority list of TGTs (upto 30.4.1988) vide Annexure-A/4, the seniority No.4965 was allotted to Respondent No.3 and seniority No.4986 was allotted to the applicant on the basis of their position in the panel of Direct Recruits for the year 1984-85. Respondents have also admitted that in the seniority lists published in 2002 and 2004, the applicant is figuring against seniority No.232. According to them, when the discrepancy between the provisional common all India seniority list of TGTs upto 30.4.1988 and 2004 was made known, there was no other option than to put the matter before the review D.P.C., based on the recommendations of which promotion of the applicant to PGT for the year 2005-06 sought to be withdrawn. The Respondents have submitted that the claim of the applicant that the all India seniority list of TGTs in the year 2004 having not been called in question by anyone including Respondent No.3, the same should hold good is a hope against the hope as the seniority list so published is provisional and subject to necessary corrections etc. According to Respondent-Sangathan, after refixation of seniority, the applicant has been assigned seniority No.353A vis-à-vis Shri H.C.Prusty (Res.No.) 346 in consequence of which the applicant has been promoted to the post of PGT vide order dated 4.4.2008(Annexure-A/8). In the circumstances, the Respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

3. Private Respondent No.3 has neither appeared nor filed any counter.

4. We have heard the learned counsel for the parties and perused the materials on record.



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5. It is not in dispute that the applicant is junior to Respondent No.3 in order of merit as direct recruit to the post of T.G.T. for the year 1984-85. It is also an admitted position that the applicant had been shown junior to Res.No.3 in the provisional common all India seniority list of TGTs upto 30.4.1988. The applicant has never assailed of his determination of seniority upto 30.4.1988 showing him junior to Res. No.3, inter alia on the grounds as now urged. Although it was due to inadvertence or oversight, as the case may be, the applicant was held senior to Respondent No.3 in the common All India seniority lists published in the years 2002 and 2004 to which no objection has been raised, but it cannot be said that the Respondents are divested with the powers to rectify such mistake on being so pointed out. This apart, it is not a matter which has long since been settled conferring benefits after benefits on the applicant due to such assignment of seniority. The mistake having been pointed out in the nick of the time, we cannot but hold that there has been timely intervention by the Respondent-Sangathan in the matter of rectification thereof that has crept in the seniority list. Besides the above, the statement made by the Respondents in the counter that after refixation of seniority against seniority No.353A, the applicant has been promoted to the post of P.G.T. has not been disputed before us.

6. Before parting with this case, it would be noteworthy to keep on record that the applicant, in support of his contentions has placed reliance on the following decisions:

- i) AIR 1999 SC 3785 (Balabir Singh v. State of H.P.)
- ii) AIR 1999(SC) 309-Ramujarey v. Union of India
- iii) 103(2007) CLT5(ATC) CAT – Engineer (Con) S.E.Railway vs. Union of India

7. We have gone through the decisions cited by the applicant supra. The ratio decided by the Hon'ble Supreme Court in case of Balabir Singh v. State of H.P.(supra) arising out of distinct facts and circumstances, is of no help to the applicant inasmuch as promotion which had been accorded under a mistaken belief and too was supported by the Respondent-State, having been subsequently withdrawn on the ground that the said promotion was erroneously under a mistaken belief, the Hon'ble Supreme Court observed that the Respondents could not be permitted to blow hot and cold from the same breath. But in the instant case, the Respondent-Department have neither taken a conscious decision nor have they ever supported the case of the applicant and what they submit that the promotion was based on wrong seniority assigned to the applicant, which has since been rectified and the applicant promoted.

In so far as other two decisions cited by the applicant (supra), we are not at one with him that he has not been afforded reasonable opportunity. Since the applicant has not disputed his re-fixation of seniority at seniority No.353A, the applicability of decision at (iii) supra has hardly any application to the instant case.

8. Apart from the above, it is to be noted that three Judges Bench of the Hon'ble Supreme Court in AIR 1958 SC 578 (M.K.Venkatachalam, I.T.O. v. Bombay Dyeing & Mfg. Co.Ltd. have held that "if a mistake of fact apparent from the record of the assessment order can be rectified under Section 35, we see no reason why a mistake of law which is glaring and obvious cannot be similarly rectified". Similarly, in (2006) 3 SCC 690 (Maharashtra State Seeds Corp.Ltd. v. Hariprasad Drupadrao Jadhao, the Hon'ble Supreme Court has settled the principle that an administrative order can be recalled. A mistake can be rectified. In Major General R.S.Balyan v. Secy., Ministry of

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Defence, Govt. of India (2007) 1 SCC 513, it has been held by the Hon'ble Supreme Court that the Union of India is competent to correct the mistake of ranking the appellant senior to Respondent No.5 in the substantive rank of Brigadier when such mistake or irregularity has come to its knowledge through representation having been made by the affected army officers in 2004.

9. For the discussions held above, we hold that the applicant has not been able to make out a case for any of the relief sought for. In the circumstances, the O.A. being devoid of merit is liable to be dismissed and accordingly, the same is dismissed. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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