

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH, CALCUTTA

O.A. No.635 of 1996

Dated Calcutta the 19<sup>th</sup> June 2002

Harish Chandra Roy, son of Late Sahadeb Roy, working for gain as Vice-Principal, FBPHS School, PO & PS Farakka Barrage, Dist. Murshidabad, at present residing at Qrs. No.A-23/II, PO & PS Farakka Barrage, Dist. Murshidabad.

.. Applicant

versus-

1. Union of India through Secretary, Govt. of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
2. Chairman, DPC, service through Secretary, U.P.S.C. Dholepur House, Sajahana Road, New Delhi-11.
3. General Manager, FBP, PO Farakka Barrage, Dist. Murshidabad.
4. Sri G.P. Sinha Roy, Teacher-in-Charge, Primary and now Offg. Principal, FBPHS School, PO Farakka Barrage, District Murshidabad.

.. Respondents

Counsel for the applicant .. Mr. B.C. Sinha

Counsel for the respondents .. MS. U. Sanyal

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member(A)  
The Hon'ble Mrs. Meera Chibber, Member(J)

O R D E R

L.R.K. Prasad, Member(A):

1. The applicant has filed this O.A. with the prayer to quash the letter dated 11.4.1996 (Annexure-A18) and direct the respondents to hold review DPC for considering the case of the applicant for promotion to the post of Principal in accordance with Recruitment Rules.

2. Heard the learned counsel for the parties and perused the materials on record. The applicant initially joined in 1966 at F.B.P.H.S. School against a reserved vacancy for Scheduled Caste (Annexure-A1). He was promoted as Assistant Headmaster in 1980. The applicant passed M.A. examination in 1980, whereafter he was promoted to the post of Vice-Principal in 1981. It is stated that the said promotion was given retrospective effect on ad hoc basis from 20.12.1980 (Annexure-A5). The applicant's main grievance is against private respondent no.4. It is alleged by him that even though he fulfilled the eligibility criteria for promotion to the post of Principal, he was not given due promotion, as per Recruitment Rules. On the other hand, the private respondent no.4, who did not fulfil the prescribed eligibility criteria, was ultimately promoted to the said post, against the provisions of Recruitment Rules.
3. ~~From~~ The minutes of the DPC held on 13.7.1989 (Annexure-A7-page 18) for selection to the post of Vice-Principal/Teacher-in-Charge of FBPHS School, indicate that a panel of two persons (respondent no.4 and applicant in S.C. quota) were recommended for the two posts of Vice-Principal/Teacher-in-Charge. It is noted that the Recruitment Rules for the posts of Principal/Vice-Principal/Teacher-in-Charge were published on 18.8.1986.
4. It is the claim of the applicant that as he has been performing the function of the Principal from time to time, belongs to S.C. community and he has done M.A., ~~he was entitled to be appointed~~ as Principal of the said School. However, without considering his claim for the post of Principal, the concerned authorities placed a requisition before the UPSC. As he was not called to interview by UPSC, he filed an application before this Bench on 12.7.1988 and got interim stay (Annexure-A10). The office order dated 28th July 1989 indicates that on the recommendation of DPC,

the applicant and private respondent no.4 were promoted to the post of Vice-Principal and Teacher-in-Charge respectively in an officiating capacity with effect from 13.7.1989. They were put on probation for a period of two years. A seniority list of Vice-Principal/Teacher-in-Charge of FEPHS School as on 25.9.1990 was published on 4.10.1990 (page 29). This shows that respondent no.4 is at serial no. 1, the applicant is at serial no.2, meaning thereby that the applicant has been shown junior to the private respondent. Against the said seniority list, the applicant submitted a representation (Annexure-A13) which was followed by several other representations with the prayer to consider him for promotion to the post of Principal and declare him senior to respondent no.4 specially on the ground that since the inception of the School, the post of Principal has not been filled up by reserved community candidate. It appears that a DPC was constituted for the purpose of considering promotion to the post of Principal of the said School and all relevant papers were provided to UPSC for finalising the matter. On the basis of recommendation of UPSC, respondent no.4 was appointed to the post of Principal vide order dated 11.4.1996 (Annexure-A18) on the terms and conditions stated therein. Hence, aggrieved by the appointment of respondent no.4 to the post of Principal, the applicant has impugned the order dated 11.4.1996 (Annexure-A18).

5. The respondent no.4 has filed W.S. opposing the application. The above application has been opposed on behalf of the official respondents. While giving background of the case, the respondents have stated clearly that the post of Principal, FEPHS School is a selection post and the appointment is given on the

basis of recommendation of UPSC. On the basis of recommendation of UPSC, Shri G.P.Sinha Roy has been appointed as Principal of the said School vide order dated 11.4.1996. It is clarified that prior to 16.6.1979, the said school was on State Govt. pattern. The applicant was promoted to the post of Assistant Headmaster on ad hoc basis with effect from 18.12.1980. The said school was converted from West Bengal pattern to K.V.S. pattern with effect from 16.7.1979. Accordingly, the applicant was appointed as Vice-Principal on ad hoc basis with effect from 20.12.1980 on central scale. While denying the allegations of the applicant, as alleged in the O.A., the respondents have stated that required information regarding contingency of ad hoc promotion was sent to Ministry on 21st January 1985 in respect of respondent no.4, who was promoted on ad hoc basis to the post of Teacher-in-Charge from 20.7.1971 (Annexure-R-1). On introduction of K.V.S. pattern, the post of Teacher-in-Charge was brought under gazetted establishment with effect from 16.7.1979 (Annexure-R-2). In the meeting of the DPC held on 13.7.1989, the promotions of the applicant as Vice-Principal and respondent no.4 as Teacher-in-Charge were regularised respectively with effect from 13.7.1989 (Annexures-R-4 and 5 are relevant). It is further clarified that prior to notification of Recruitment Rules for the post of Principal, Vice-Principal and Teacher-in-Charge on 18.3.1986, both were holding their respective posts on ad hoc basis. With reference to para 4.10 of the application, it is stated that Shri A.K.Ghosh, Principal, FBPHS School, retired from service on 31.1.1987. In the meantime Recruitment Rules

for the post of Principal had already come into existence, which provided method of recruitment as by promotion failing which by transfer on deputation and failing both, by direct recruitment. As there was no eligible candidate in the feeder grade, as per the Recruitment Rules for the post of Principal and as nobody could be taken up on transfer on deputation, it was decided to fill up the vacancy by direct recruitment through UPSC. A proposal in this regard was sent to UPSC on 30.4.1988. One Shri V.K. Agarwal was selected for the post of Principal through UPSC in 1988. In the meantime, the applicant had filed a petition before CAT, Calcutta Bench against the said selection. However, later on the applicant withdrew his application. Thereafter, an appointment order in favour of Shri V.K. Agarwal was issued on 28.6.1993. In the meantime, an intimation was received that Shri Agarwal is not interested in joining the post. An attempt was made to fill up the post by transfer on deputation but no response was received. Since both the methods of recruitment failed, a decision was taken to fill up the post of Principal by promotion. As applicant and respondent no.4 were not eligible for promotion, as per prescribed Recruitment Rules, relaxation of the condition of regular service of 8 years was sought from the Department of Personnel, Govt. of India. On receipt of relaxation, a proposal was sent to UPSC in September 1995 with the request to convene a meeting of DPC for filling up the post of Principal. Accordingly, a meeting of DPC was held in UPSC on 13.3.1996. The case of both candidates, including the applicant, was considered by UPSC in accordance with Recruitment Rules and relaxation given by the competent authority. On due

consideration of the case, the UPSC recommended the name of respondent no.4 for promotion to the post of Principal in FBPHS School and on the basis of said recommendation, Shri G.P.Sinha Roy (respondent no.4) was appointed as Principal in FBPHS School vide order dated 11.4.1996 (Annexure-A18). We agree with the submission made on behalf of the respondents that as there was a single vacancy in the recruitment year, the post was treated as unreserved and it was filled up on the basis of selection in which the unreserved candidate <sup>only</sup> came successful.

5. The respondents have already clarified that both the posts of Vice-Principal and Teacher-in-Charge are analogous. The Recruitment Rules, which were notified on 18.8.1986, prescribe same ground/condition for promotion. It is observed that both the applicant and respondent no.4 had passed M.A. Examination before the date of holding of DPC on 13.7.1989. As per the recommendation of DPC, their services were regularised to the respective post with effect from 13.7.1989. A seniority list for the posts of Vice-Principal/Teacher-in-Charge was prepared, in the order of merit, as indicated in the selection panel (Annexure-R4) and, as such, the private respondent was declared senior to the applicant in the seniority list, which was published on 4.10.1990 (Annexure-A-13).

6. It is significant to note that the applicant has not filed any rejoinder to W.S. and thereby not rebutting the points/assertions made against the applicant by the respondents through their W.S.

7. Before we proceed further in the matter, it would be relevant to point out that the Recruitment Rules (page 19) notified on 18.8.1986 prescribes the

eligibility criteria for the post of Principal and Vice-Principal/Teacher-in-Charge. It is important to note that the posts of Vice-Principal and Teacher-in-Charge of FBPHS School has been clubbed together and the same eligibility criteria have been prescribed for both, meaning thereby that the status of the two posts are more or less similar. For the post of Principal, according to Recruitment Rules, as referred to above, the mode of recruitment is by promotion, failing which by transfer or deputation, failing both, by direct recruitment. The post is a selection post which means that the applicant has to be considered and selected through a selection process on the basis of recommendation of duly constituted DPC in UPSC. Recruitment Rules also prescribe qualifications which are essential/desirable for the post of Principal. One of the essential condition for being considered for the post of Principal is 10 years experience of teaching in a High/Higher Secondary School, or an Intermediate College. The Department had made efforts to fill up the post by required method of selection and finally they had resorted to direct recruitment method. A person, namely, Shri V.K. Agarwal, was selected for the post on the basis of direct recruitment but as he failed to take up the assignment, the Department decided to adopt the method of promotion by moving the competent authority for relaxing the 10 years teaching experience to 8 years, as the internal candidates had not by then completed 10 years of teaching experience. On receipt of relaxation from competent authority, whereby the teaching experience was reduced from 10 years to 8 years, a proposal was sent to UPSC for considering the case of the applicant as well as private

respondent for the post of Principal of the said School. After due consideration, the name of private respondent was recommended by UPSC and ultimately he was appointed to the said post vide order dated 11.4.1996 (Annexure-A18). It may be pointed out that it was a single post in a recruitment year. The same was not reserved for the applicant, as per prescribed roster policy. Therefore, ultimately on the basis of selection, this post was filled up by respondent no.4.

9. It is settled principle of law that there should be least interference with the findings of expert body like DPC specially when constituted in UPSC, unless it can be established that the findings of such Body are contrary to the statutory provisions of law or the recommendations have been made with mala fide intention. In the instant case, we do not find any such thing. Therefore, the recommendation of expert body like UPSC has to be honoured. Moreover, the recommendations of UPSC have not been challenged by the applicant on any valid grounds.

10. The post of Principal of the said School was also not exclusively reserved for Scheduled Caste. The case of the applicant along with respondent no.4 was considered in accordance with law and the relaxation given by the competent authority by the duly constituted expert body, and on the basis of recommendation of UPSC, the respondent no.4 was appointed to the post of Principal vide order dated 11.4.1996 (Annexure-A18).

11. In view of the facts and circumstances, as stated above, we find that the respondents have proceeded in the matter in accordance with law in the matter of appointment of respondent no.4 as Principal of the



said School. The case of the applicant had already been considered for the said post but his name was not recommended by the DPC constituted in UPSC. As per settled law, a person has right to be considered for a particular post if he fulfils the eligibility criteria, but he has no right of appointment specially when the post is a selection post.

~~12.~~ In view of the above analysis of the case, we have reached conclusion that this O.A. has no merit and the same is, accordingly, dismissed with no order as to the costs.



(Meera Chibber)  
Member(J)



(L.R.K. Prasad)  
Member(A)

18.6.02