

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JODHPUR BENCH**

...

**ORIGINAL APPLICATION NO.173 of 2004**  
**Jodhpur, this the 12th day of September, 2008**

...

**CORAM:HON'BLE MR.D.SANKARAN KUTTY, MEMBER(J)**  
**HON'BLE MR.TARSEM LAL, MEMBER(A)**

...

Pep Singh Rajawat son of Shri Sardar Singh, age 52 years, Post Graduate Teacher, Jawahar Navodaya Vidyalaya, Kuchman City, Nagaur (Rajasthan).

...APPLICANT

BY ADVOCATE: **SHRI P.R.SINGH**

VERSUS

1. Union of India, through Secretary to the Ministry of Human Resource Development, Department of Education, New Delhi.
2. The Commissioner, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P.Estate, New Delhi.
3. The Deputy Director, Navodaya Vidyalaya Samiti, Regional Office, A-12, Shastri Nagar, Jaipur-16( Rajasthan)
4. Shri R.K.Dixit, Vice Principal, Service through the Commissioner, Navodaya Vidyalaya Samiti, Indira Gandhi Stadium, I.P.Estate, New Delhi.

...RESPONDENTS

BY ADVOCATE: **SHRI V.S.GURJAR-For respondents 1 to 3**  
**None for private Respondent No.4**



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**ORDER**

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**HON'BLE MR.D.SHANKARAN KUTTY, MEMBER(J):-**

The grievance agitated by the applicant in the present O.A. is with regard to his seniority position and the consequent benefit of promotion to the post of Vice Principal. The applicant has prayed for the following reliefs that:-

- i) Appropriate directions be given to respondents to accord him seniority from the date he was appointed as PGT in the Kendriya Vidyalaya Sangathan i.e. 14.3.1999; or, alternatively,
- ii) A direction be issued to respondents to give him the benefit of seniority from the date he was appointed to the post of PGT on deputation basis in Navodaya Vidyalaya Samiti i.e. 26.7.1991; and
- iii) A further direction be issued to respondents to promote him to the post of Vice Principal from the date his immediate junior was so promoted;

The applicant has also prayed that the order dated 21/22.6.2004 (Annexure A-19) may be quashed and set aside and respondents may be directed to grant him selection pay scale on completion of 12 years of service from the date he joined as PGT in K.V.S.

2. Applicant was initially appointed as a Lab Assistant in Kendriya Vidyalaya Sangathan ('KVS' for short) in 1971. On acquisition of requisite qualifications he was appointed as Primary Teacher in 1983 and then as a Postgraduate Teacher in 1986. In 1990, as per Annexure A-2,

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he was appointed as PGT (History) in KVS. From this post, he came on deputation to the Navodaya Vidyalaya Samiti (NVS' for short) under order at Annexure A-3 dated 16.7.1991.

3. Applicant states that respondents (N.V.S.) issued a seniority list on 16.1.2004, as per Annexure A-1, wherefrom he came to know that even though he was much higher in seniority, but, was not promoted to the post of Vice Principal and persons junior to him had got this promotion.

He made a representation but respondents, ignoring his claim, promoted 63 PGTs to the posts of Vice Principal vide order dated 18.5.2004 (Annexure A-8). Plea of the applicant is that prior to issuance of Annexures A-1 and A-8, respondents issued no seniority list after his absorption in NVS. A seniority list was issued by the respondents earlier on 22.12.1995 in which his name did not appear as he was absorbed only on 1.1.1997. After his absorption, respondents issued seniority list (Annexure A-18) on 7/14.3.2005 in which his name is mentioned at Sr.No.864 and his date of regular appointment has been mentioned as 1.1.1997. The claim of the applicant is that he is entitled for seniority w.e.f. the date of joining service as P.G.T. in his parent department i.e. 14.3.1990 or at the most from 26.7.1991 i.e. the date on which he joined NVS on deputation. That besides, the other grievance of the applicant is that he has not been given the benefit of selection pay scale w.e.f. 14.3.2002 i.e. on completion of 12 years of service w.e.f. 14.3.1990 from

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the date he joined as PGT in K.V.S. on the plea that he was permanently absorbed in NVS w.e.f. 1.1.1997. Therefore, he shall be entitled for the selection pay scale only w.e.f. 1.1.2009. Such action of respondents is against the ACP Scheme of the Central Govt., accepted and adopted by the respondent Samiti. The action of respondents in not according him seniority w.e.f. 26.7.1991 and not giving him promotion to the post of Vice Principal by taking into consideration the date of his deputation to NVS and not giving him the selection pay scale on completion of 12 years of service in the existing pay scale is illegal, arbitrary and against the rules and the law. He <sup>has</sup> placed reliance on Clause 5 of the rules for absorption of deputationists in NVS, which is extracted below for ready reference:-

“5. 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 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 of 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, affect the regular promotions. The seniority fixed in the Samiti will,

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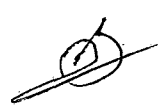
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therefore, be operative only in filling up of vacancies in the higher grade occurring after the date of absorption."

On grounds taken in Para 5 of the O.A., applicant has prayed that the O.A. may be allowed with appropriate directions to respondents.

4. The stand of the respondents is that their action is perfectly legal, valid and in accordance with rules, instructions and the law on absorption of deputationists. Their objection to the O.A. is that seniority matters cannot be agitated after long delay and things settled long back cannot be unsettled at a belated stage. The O.A. suffers from multiplicity of reliefs and is not maintainable under Rule 10 of the CAT (Procedure) Rules. The further objection taken by the respondents is that applicant was given an opportunity to be absorbed in the Samiti w.e.f. 1.4.1994 as per Annexure R/38, dated 21.2.2000 but he furnished willingness for absorption w.e.f. 1.1.1997 accepting all its consequences as per Annexure R/39 dated 7.3.2000. Having given such acceptance, the applicant cannot now turn around to claim seniority from an earlier date. The applicant is bound by the principles of estoppel and the O.A. is not maintainable.

5. Respondents have also contested the O.A. on merits. They have pleaded that applicant is not on the cadre of Vice Principals, therefore, no cause of action can be said to have arisen to him because of communication dated 16.1.2004. Applicant is not entitled to any of the reliefs, prayed for. The O.A. merits rejected.

  
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6. Applicant has filed a rejoinder.
7. We have heard Id. Counsel for the parties and have carefully perused the material and documents on record.
8. During course of arguments, Id. Counsel for the applicant drew our attention to provisions on seniority & promotion, as given in Swamy's Manual on Establishment and Administration (extracted in Swamy's Handbook-2004), at Sr.No.6 where under it is provided as follows:-

**"6. Deputationists absorbed subsequently – Normally, seniority will be from the date of absorption. *However, if he had been holding the same or equivalent grade in the department, seniority will be from the date of deputation or the date of his regular appointment in the grade in his previous department, whichever is earlier.*"**

The Id. Counsel further drew our attention to Rule 3.4.1 under the Heading "Seniority of Transferees" (page 428 of the Swamy's Manual on Establishment & Administration), which reads as follows:-

**"3.4.1 In the case of a person who is initially taken on deputation and absorbed later i.e. where the relevant recruitment rules provide for "transfer on deputation/ Transfer", his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from -**

**- the date he has been holding the post on deputation**

**(or)**

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

9. The Id. Counsel on the strength of a decision dated September, 8, 1997 of the Hon'ble High Court of Punjab & Haryana in **CWP No.6632 of 1995**, titled **KARAMJIT TGT(SS) VS. THE DIRECTOR, NAVODAYA VIDYALAYA SAMITI & OTHERS**, argued that, in any case, *where a person has subsequent to his coming on deputation to the Samiti got regular promotion in the same or equivalent post in his parent Department, his seniority in the post will be taken from the date of his such regular promotion to the post in which his parent department or the date of his deputation, whichever is later.* On these arguments the Id. Counsel prayed that the O.A. deserves to be allowed.

10. Ld. Counsel for respondents argued that the applicant is agitating regarding his seniority after long delay. In the interregnum, a number of persons have been promoted to the higher posts of Vice Principal. In case the claim of the applicant is permitted, certain settled issues <sup>②</sup> will get unsettled and the Courts/ Tribunal are normally reluctant to do so. The O.A. deserves to be dismissed. Ld. Counsel for the applicant countered this plea of the Id. Counsel for the respondents and argued that the applicant would be satisfied even if his claim is permitted without unsettling the promotions already given to various other persons. In this connection, the Id. Counsel placed reliance on a decision of Lucknow

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Bench the Central Administrative Tribunal, given on 11<sup>th</sup> August, 2006 in **OA No.521 of 2002, titled DR.H.K.KATIYAR VS. NAVODAYA VIDYALAYA SAMITI & OTHERS** and the connected **O.A.No.635/2002, titled SMT. INDRA GARG VS. NAVODAYA VIDYALAYA SAMITI & OTHERS** in which, on adjudication of the matter on a similar issue, as posed in the present O.A., it was held that there is no room for any doubt that seniority is to be reckoned from the date of joining in the Samiti on deputation and not from the date of permanent absorption. Any subsequent clarifications given in this regard, cannot dilute such a plain provision contained in the rules and that too to the disadvantage of the applicants therein. The Id. Counsel assiduously argued that the respondents have committed an illegality in assigning seniority to the present applicant from the date of his absorption.

11. We have give our anxious thought and consideration to the rival pleadings and arguments and we come to a definite conclusion that under provisions of the rules if the applicant was holding the same or equivalent grade in his previous department, he was entitled to be given seniority from the date of deputation or from the date of his regular appointment in the grade in his previous department, whichever is earlier. In view of the position under rules and the law, as discussed above in detail, the applicant was at least entitled to seniority from the date of his deputation to the respondent department. The plea of the respondents is

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that applicant on his own furnished willingness for absorption w.e.f.

1.1.1997 accepting all its consequences. Having given such acceptance,

he cannot now turn around to claim seniority from an earlier date and is

bound by the principles of estoppel. During course of arguments, no

cogent reply came to us from either side in this regard and we are not sure

whether on such an acceptance given by the applicant, it was just and

proper for the respondents to have denied seniority to the applicant from

the date he is, otherwise, entitled to under the extant rules and the law.

Even on other objections taken by the respondents, we also do not feel

persuaded to take a view that the present O.A. is not maintainable or has

no merit.

12. In the conspectus of the facts and circumstances of the present

case, we dispose of the present O.A. by remitting the case to the

respondent authorities to carefully reconsider the matter of seniority of

the applicant keeping in view the rules, law, as well as our observations

made, hereinabove, and to assign due and proper place to the applicant in

the seniority list and also to consider and grant him all consequential

benefits flowing there from, including promotion to the post of Vice

Principal, if he is otherwise eligible and entitled to the same. We,

however, make it clear that these orders will not affect the promotions

already made by the respondents.

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13. The directions, given above, be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. Parties are left to bear their own costs.

*Tarsem Lal*  
(TARSEM LAL)  
MEMBER(A)

*D. Shankaran Kutty*  
(D.SHANKARAN KUTTY)  
MEMBER(J)

**Dated: September 12, 2008**

'bss'

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Recd copy.  
Ramt Nair  
16/09/08

cert II and III destroyed  
in my presence on 15/12/14  
under the supervision of  
section officer (j) as per  
order dated 19/8/2014  
Section officer (Records)

RI copy  
on 17/9  
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