

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 581 of 2006

Order Reserved on 13.3.2014

Order Pronounced on 31-03-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

1. Devendra Kumar Garg, aged about 48 years, son of Shri Swami Deen Garg, permanent resident of Village Chachinda, Post Office Sotharapur, District Fatehpur (presently working as TGT in Jawahar Navodaya Vidyalaya, Dabha Semar District Faizabad).

2. Sunil Kumar, aged about 46 years, son of Shri Ram Babu Kulshreshta, permanent resident of Village and Post Office Iradatnagar, district Agra (presently working As T.G.T in Jawahar Navodaya Vidyalaya, Paigaon, District Mathura).

Applicants

By Advocate Sri Prashant Kumar Singh.

Versus

1. Navodaya Vidyalaya Samiti, through the Commissioner, Navodaya Vidyalaya Samiti, New Delhi.
2. Commissioner, Navodaya Vidyalaya Samiti, New Delhi.
3. Deputy Commissioner, Navodaya Vidyalaya Samiti, Lucknow Region, Lekhraj Panna, IIIrd Floor, Sector 2, Vikas Nagar, Lucknow 226022.

Respondents

By Advocate Sri Ankit Srivastava for Shri Anurag Srivastava.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (a) issuing/passing of an order or direction to the Respondents setting aside the impugned decisions communicated vide letters/orders dated 5.8.1998 issued from the office of the Respondent No. 2 and dated 21.11.2005, passed/issued by the

Respondent No. 3 on the representation of the applicant No. 2 (as contained in Annexure Nos. A-2 and A-3 to the application), after summoning its original from the respondents.

(b) issuing/passing of an order or direction to consider and decide the question of determination of seniority of the applicants in the cadre of TGT in Navodaya Vidyalaya Samiti with effect from 21.11.1986 and 15.12.1986, respectively, when they had joined the Navodaya Vidyalaya Samiti on deputation with all consequential benefits including promotion etc. and to pass appropriate orders for correction of the impugned seniority list issued vide letter dated 31.5.1994 (as contained in Annexure No. k A-1 to this application) and for placement of the names of the applicants at serial Nos. 1 and 2 respectively, within a period of two months.

(c) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(d) allowing this Original Application with cost."

2. The brief facts of the case are that the applicant No. 1 was initially appointed as Assistant Teacher in 1986 in TG Grade in Government Inter College and thereafter appointed as TGT in Jawahar Navodaya Vidyalaya Samiti and applicant No. 2 was initially appointed as Assistant Teacher in TG Grade in JNVS on deputation and later transferred to Mathura on 3.7.1990. The applicants thereafter permanently absorbed as TGT in NVS in 1991. In 1994, a seniority list was issued in respect of TGTs working in Lucknow region but the applicants were not assigned correct seniority, as such, the applicant file Writ Petition before the Hon'ble High Court and the Writ Petition was finally disposed of with a direction to the applicants to make fresh representation and the respondents were directed to dispose of the representation by speaking order expeditiously preferably within a period of 4 months from the date of the said representation. The representations submitted by the applicants were rejected vide Memo dated 5.8.1998 and the applicants again challenged the order dated 5.8.1998 for issuing a direction to the respondents to rectify the seniority list and place them at serial Nos. 1 and 2 in the seniority list by giving them seniority from their date of joining in the Samiti. The said Writ Petition was allowed with permission to file the O.A. before the Tribunal. The learned counsel for the applicant has also pointed out that

similar issue has already been decided by the Hon'ble High Court of Punjab and Haryana and after knowing the decision, the applicant No. 1 again submitted a representation. When nothing was heard, he submitted another representation/reminder. After substantial period of time, the applicant No. 1 resigned on 4.12.2008, as such, the grievance is left in respect of applicant No. 2.

3. The learned counsel appearing on behalf of the respondents has filed objections to the delay condonation application and through objections, it is indicated that the applicant No. 1 and 2 were taken on deputation in NVS as TGT on 10.11.1986 and was posted at Faizabad and Gorakhpur respectively. In 1995, both the applicants were absorbed in the Samiti and as per the seniority list, they were placed at Serial No. 46 and 47 respectively. The Writ Petition preferred by the applicants was disposed of with a direction to reconsider the case of the applicant and in pursuance of the judgment and order of the Hon'ble High Court, the representations were rejected by the competent authority. The applicants again challenged the said order but the said Writ Petition was allowed to be withdrawn by means of judgment and order dated 12.9.2003 and the present O.A. is preferred by the applicants in 2006. As such, the same is liable to be dismissed on the ground of limitation alone.

4. The learned counsel appearing on behalf of the applicant filed rejoinder to the objections filed by the respondents and reiterated the averments made in the O.A.

5. Heard the learned counsel for the parties and perused the record.

6. The applicants were taken on deputation and they joined the service at Jawahar Navodaya Vidyalaya and thereafter, they were permanently absorbed as TGT in the NVS in 1995. At that point of time, the seniority list was issued and in the said seniority, the applicants were placed at Serial No.s 46 and 47 respectively. It is undisputed to the fact that the applicant preferred a Writ Petition before the Hon'ble High Court and the said writ petition was disposed of finally with a direction to the respondents to consider and decide the applicants representation

and in pursuance thereof, the applicants preferred a representation which was considered and decided by the Samiti vide order dated 5.8.1998. While deciding the said representation, it is indicated by the respondents that the applicants prayed for granting fixation of their seniority as TGT(English) with effect from the date of joining the Samiti on deputation basis in accordance with Rules 5 of Permanent Absorption Rules keeping in view the facts that he was holding analogous posts in the parent department before joining the Samiti and while deciding the representation, it is indicated that the seniority of the teachers upon their permanent absorption has been determined from the date of their absorption in the Samiti and their inter-se-seniority has been fixed in accordance with Rule 5 of the Permanent Absorption Rules among that batch of absorbees giving due regards to their position in the parent department. The averments of the learned counsel for the applicant also cannot be disputed to the extent that the issue was settled by Hon'ble High Court of Panjab and Haryana in Civil Writ Petition No. 6632 of 1995 and the Hon'ble High Court has dealt with rule 5 of NVS Permanent Absorption Rules. The said Rule 5 reads as under:-

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

7. While deciding the Writ Petition, the Hon'ble High Court has been pleased to allow the Writ Petition and observed that the petitioner shall be entitled to the benefit of regular service for fixation of seniority in the post of Trained Graduate Teacher with effect from 9th September, 1988 and also directed that the petitioner shall be entitled to the consequential benefits. The issue was again raised before the Allahabad Bench of this Tribunal in O.A. No. 981 of 1999 and while deciding the said O.A., the Tribunal again dealt with Fixation of Seniority under Permanent Absorption Rules of NVS and the O.A. was disposed of with certain directions. Not only this the issue was again agitated before this Tribunal at Lucknow in O.A. Nos. 521 of 2002 and O.A. No. 635 of 2002 and while deciding the said O.As, this Tribunal at Lucknow again disposed of the OAs with certain directions which reads as under:-

"So, these OAs are disposed of and the policy decision dated 15.7.2003 and the order dated 16.7.2003 are quashed and the respondents are directed to recast the seniority so as to assign the applicant seniority from the date they came on deputation in Samiti and grant them all consequential benefits within a period of three months from the date a certified copy of this order is received by them. These orders will not affect the promotion already made vide order dated 9.5.2003. No order as to costs."

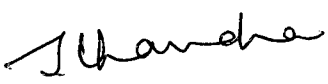
8. We are supported by Hon'ble Supreme Court on this point in the case of **A. Janardhana Vs. U.O. I. reported in 1983 (3) SCC 601** wherein it was held as under by Hon'ble Supreme Court:


"In this case, appellant does not claim seniority over any particular individual in the background of any particular face controverted by that person against whom the claim is made. The contention is that criteria adopted by the Union Government in drawing up the impugned seniority list are invalid and illegal and the relief is claimed against the Union Government restraining it from upsetting or quashing the already drawn up valid list and for quashing the impugned seniority list. Thus, the relief is claimed against the Union Government and not against any particular individual. In this background, we consider it unnecessary to have all direct recruits to be impleaded as respondents. We may in this connection refer to General Manager, South Central Railway, Secundrabad & Anr. Etc. Vs. A.V. R. Sidhanti and Ors. Etc. Repelling a contention on behalf of the appellant that the writ petitioners did not implead about 120 employees who were likely to be affected by the decision in this case, this Court observed that the respondents (Original petitioners) are impeaching the validity of those policy decisions on the ground of their being violative of Arts. 14 and 16 of the Constitution. The proceedings are analogous to those in which the constitutionality of a statutory rule regulating seniority of government servants is assailed. In such proceedings, the necessary parties to be impleaded are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Approaching the matter from this angle, it may be noticed that relief is sought only against the Union of India and the concerned Ministry and not against any individual nor any seniority is claimed by any one individual against another particular individual and therefore, even if technically the direct recruits were not before the Court, the petition is not likely to fail on that ground. The contention of the respondents for this additional reason must also be negative."

9. In the instant case, the applicant was not sleeping over their rights and they also submitted their representations on the fixation of the wrong seniority and contrary to the rules which were in existence.
10. Considering the observations made by the Hon'ble High Court as well as two decisions of this Tribunal, and also the observations made by the learned counsel for the parties, we deem it appropriate to pass an order quashing the impugned order dated 5.8.1998 and 21.11.2005 and directing the respondents to decide the question of determination of the seniority of applicant in the cadre of TGT in NVS w.e.f. 15.12.1986 with all consequential benefits. The same shall be done within a period of three months from the date a certified copy of this order. Since, the applicant

No. 1 has already resigned on 4.12.2008, as such he shall be entitled for all consequential benefits till 4.12.2008.

11. O.A. is allowed as indicated above. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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