

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.159/92

Date of order: 19.7.95

Snehlata Mathur : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.Rajendra Prasad : Counsel for the applicant

Mr.Manish Bhandari : Counsel for the respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm)

Hon'ble Mr.Ratan Prakash, Member(Judl.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant has prayed that order dated 28.2.92 (Annx.A1) by which Smt.Alka Arora, respondent No.5, was appointed as Sr.Teacher (Biology) in scale Rs.1640-2900 in Railway Higher Secondary School, Gangapurcity and as a consequence, the applicant was reverted from the said post, may be quashed and the respondents may be directed to consider the case of the applicant for promotion to the post of Sr.Teacher w.e.f. 28.2.92 with consequential benefits. She has sought a further direction that the respondents may be directed to allow her to work as Sr.Teacher (Biology) till the process of promotion is finalised.

2. The case of the applicant is that she was appointed as Junior Teacher w.e.f. 12.9.1972 and from 1976 she was appointed as Substitute Assistant Teacher. She was confirmed as Asstt. Teacher w.e.f. 13/14.5.81 (Annx.A2). She was promoted as Junior Teacher vide the order dated 20.9.85 (Annx.A3). On the basis of regular selection the applicant was placed on the provisional panel of Junior Teacher scale Rs.1400-2600(FP) w.e.f. 15.11.'89 (Annx.A5). A consequential order empanelling the applicant on the post of Junior Teacher was passed vide Annx.A6 dated 2.1.'90. Vide order dated 28.2.91 (Annx.A7) she was appointed

as Sr.Teacher on ad hoc basis.

3. Vide communication dated 11.10.90, the respondents proposed to hold selection for promotion to the post of Sr.Teacher scale Rs.1640-2900(FF) from amongst Junior Teachers scale Rs.1400-2600. Applications were invited from eligible candidates and last date for submission of application was 4.11.90. The applicant could not come to know about the aforesaid letter because it was not received in the office of respondent No.4, the Principal, Ely.Sr.Secondary School, Gangapurcity, where she was working at the relevant time. She came to know about the said letter from 19.11.90, when respondent No.3, the Divisional Personnel Officer cum President, Ely.Schools, Kota Division, Kota, visited to the school. The applicant brought the omission to inform her about the selection, to the notice of the said respondent, who in turn asked her to submit an application immediately. The application submitted by her is Annex.A10 dated 19.11.90. The applicant made another application on 29.12.90 by registered post (Annex.A11). She made protest through her letters dated 26.12.90, 27.2.91 and 25.3.91 (Annexes.A12, A13 and A14) respectively. While forwarding her representation dated 27.2.91, the respondent No.4, the Principal of the School stated vide letter Annex.A15 of the same date, that no letter was received in his office whereby applications were called for from the serving employees of the School for selection to the post of Sr.Teacher(Biology). However, vide letter dated 22.4.91, she was informed by PRS/Sr.DPO that the last date for receiving applications was 4.11.90 and by that date no application had been received from her. Her case was rejected on this ground. However, the applicant continued to press the matter and also took up the matter through the W.Ely. Employees Union. She was again asked to submit an application for selection for the post of Sr.Teacher (Biology) which she did on

31.8.91 (Annex.A17). Although the respondents had been assuring the applicant that her case would be considered, yet vide order dated 28.2.92 (Annex.A1), respondent No.5 has been posted as a Sr.Teacher (Biology) on the basis of the panel prepared for the purpose and the applicant was not considered for selection. Instead, she has been reverted to her original post of Jr.Teacher.

4. Her contention is that she holds the educational qualification for occupying the post of Sr.Teacher, is competent to hold the said post and is also eligible for appointment as Sr.Teacher. It was because she was not informed about the proposed selection for the post of Sr.Teacher that she could not apply for the post.

5. The respondents in their reply have stated that the notification inviting applications was circulated to all schools under the control of Sr.Divisional Personnel Officer, Kota, vide letter dated 23.10.90 (Annex.B1) including Rly.Secondary School, Gangapurcity. The applicant was herself negligent in sending her application within the prescribed time, and she has concocted a false story in regard to non-circulation of the letter. Her application sent on 19.11.90, as per her own averment, was much after the expiry of the last date for receipt of applications. No assurance had been given to her regarding entertaining her belated application by any higher authority, nor was she asked to submit application by the Sr.DPO as stated by her. After recruitment of the selected candidates through Railway Recruitment Board, Ajmer, the applicant working as ad hoc Sr.Teacher was reverted to her substantive post.

6. We have heard the learned counsel for the parties and have gone through the records. The respondents have not categorically denied the communication or contents of letter Annex.A15 dated 27.2.'91 from the Head Master of the Railway

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Higher Secondary School, Gangapurcity, in which he had stated, while forwarding the application of the applicant that no letter calling for applications had been received in the said School. It is, thus clear that as per the certificate given by the Head Master of the school in which the applicant was working, notification inviting applications for the post of Sr. Teacher (Biology) was not received in the school. Therefore, she could not have submitted her application within the time prescribed. She did so as soon as she came to know about the fact that applications had been invited and that the notification calling for the application had not been received in her school. The applicant has acted with due diligence in pursuing the matter by sending applications, reminders etc. We hold that the notification inviting applications was not received in the School in which the applicant was working. She cannot, therefore, be faulted for not sending her application in time.

7. Accordingly, we hold that the applicant is entitled to an opportunity to appear in the selection for the post of Sr.Teacher(Biology). The respondents are directed to grant such an opportunity to her now. The mode of selection would however be the same as prescribed for other candidates including respondent No.5. If the applicant qualifies in the selection according to the standard by which respondent No.5 was declared as passed and was empanelled, the applicant would be entitled to be appointed as Sr.Teacher. None has appeared on behalf of respondent No.5. However, respondent No.5 has also been selected through the prescribed mode of selection. It is no fault of hers that the applicant was not given an opportunity to send her application for selection. Therefore, respondent No.5 is entitled to continue as Sr.Teacher regardless of whether the applicant passes the selection test which has now to be held as per our directions. In the circumstances of the

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present case assignment of higher seniority to respondent No.5 over the applicant can also not be questioned even after the applicant is selected through the due process of selection and is appointed as a Sr.Teacher. Thus no relief can be granted to the applicant qua respondent No.5.

8. However, if the applicant passes the selection test in accordance with the prescribed mode of selection, she should be appointed as Sr.Teacher and granted the prescribed scale of pay Rs.1640-2900 w.e.f. the date from which respondent No.5 was appointed as Sr.Teacher with arrears of pay from the said date for the reason that (if eventually she is selected) it was for no fault on her part that she was not given an opportunity to work as Senior Teacher for the date Smt.Alka Arora was appointed as such.

6. The O.A. is disposed of accordingly with no order as to costs.

  
(Ratan Prakash)

Member (Jud1)

  
(O.P. Sharma)

Member (Adm).