

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 186 of 2001

*Bhopal* this the 8<sup>th</sup> day of July, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mehan, Judicial Member

Shri Om Prakash Sharma, S/o  
Shri R.D. Mal, aged about 45 years,  
C/o Navodaya Vidyalaya Samiti,  
Regional Office, 160, Zone-II  
Maharana Pratap Nagar, Bhopal (MP)

APPLICANT

(By Advocate - Ku. P.L. Shrivastava)

VERSUS

1. Union of India,  
Through: Secretary, Ministry of  
Human Resource Development  
(Department of Education),  
Government of India, Room No.107  
'C' Wing, Shashtri Bhawan,  
New Delhi.
2. Navodaya Vidyalaya Samiti  
A-39, Kailash Colony, New  
Delhi-110048, Through: Joint  
Director (Admn).
3. The Deputy Director, Navodaya  
Vidyalaya Samiti, Regional  
Office, Zone-II, M.P. Nagar,  
Bhopal (MP).
4. Shri V. Sudevan, Adult, Section  
Officer, C/o Joint Director (Admn)  
Navodaya Vidyalaya Samiti,  
A-39, Kailash Colony, New Delhi.
5. Shri N. Vijayan, Adult, Section  
Officer, C/o Joint Director  
(Admn) Navodaya Vidyalaya  
Samiti, A-39, Kailash Colony,  
New Delhi - 110048

RESPONDENTS

(By Advocate - Shri O.P. Namdeo)

ORDER

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the  
following main reliefs :-

"(i) Quash the office order of 18.4.1991/Criteria  
determining the fixation of seniority on the post of  
Assistants and hold it as ultra vires of the constitution

(ii) To direct the respondent to rectify the seniority of  
the applicant in accordance with the rules and  
provisions of justice for the facts and reasons mentioned  
in the afore- preceding preceding paragraphs and  
accordingly relegate the seniority of the said  
respondents No.4 and 5 below the applicant.

(iii) To grant all consequential and ancillary service benefits, to which the applicant be entitled under the present facts and circumstances of the case."

2. The brief facts of the case are that the applicant was selected on the basis of the recommendations of the Selection Committee for the post of Assistant in Novodaya Vidyalaya Samiti (for short 'NVS') vide order dated 23.3.1988. The respondents vide letter 3.11.1992 issued the provisional seniority list in the cadre of Assistants. The name of the applicant is reflected at serial no.6. The applicant has been absorbed as Assistant by the respondents with effect from 1st May, 1991. The names of private-respondents 4 & 5, namely, Shri V.Sudevan and Shri N.Vijayan were reflected in the said seniority list at serial nos.11 and 10 respectively. The respondents 4 & 5 have joined the NVS on 25.11.1988 and 16.8.1988 respectively. The provisional seniority list was finalised vide letter dated 3.5.1993 in which the name of the applicant has been reflected at serial no.9 whereas the name of private-respondents 4 & 5 have been placed at serial nos. 2 and 6 respectively. Aggrieved by the said seniority list, the applicant has submitted his representation dated 31.5.1993. As the respondents have not taken any action to decide the correct seniority of the applicant, he has filed this O.A. claiming the afore-mentioned reliefs.

3. The respondents in their reply have stated that the applicant was absorbed in NVS on the post of Assistant on 1.5.1991 along with other Assistants working on deputation. Prior to the joining as Assistant in the NVS he was holding the post of Upper Division Clerk in his parent department i.e. Kendriya Vidyalaya Sangathan (for short 'KVS') under Chandigarh region. According to the respondents, the Chairman, NVS and Minister of Human Resource Development were pleased to relax as a one time measure to recruitment Rules to the extent that the service rendered on deputation in the NVS in respect of all officials who came on deputation

upto the date of the order was treated as qualifying service for the purpose of promotion to the next grade only. This relaxation was subject to the condition that the relevant period will not become qualifying service for the purpose of seniority which is governed by different rules. The seniority of the applicant reflected in the provisional seniority list was drawn keeping in view their joining date on deputation in the NVS and, therefore, the applicant was placed in the provisional seniority list at serial no.6 and respondents 4 & 5 were placed at serial nos. 11 and 10 respectively. They have further stated that the provisional seniority list was not issued in accordance with the guidelines issued by the NVS vide order No.1-15/91-NVS(Admn.) dated 18.4.1991 (Annexure-A-10) and the criteria laid down for fixation of seniority in Para 5 of the Permanent Absorption Rule (Annexure-II). Thus, the provisional seniority list was not operated for granting promotion to the Assistants in NVS. The seniority list of the Assistants cadre was finalised and notified vide order dated 3.5.1993(Annexure-A-2), keeping in view the instructions contained in Para 5 of the Permanent Absorption Rules of the NVS and the NVS's order dated 18.4.91. Accordingly, the name of the applicant was placed at serial no.9 and the names of respondents 4 & 5 were placed at serial nos. 2 and 6 respectively in the seniority list.

4. Heard both the learned counsel of parties.
5. The learned counsel for the applicant has vehemently argued her case. She has contended that the applicant has been absorbed with effect from 1.5.1991 and has joined the NVS before both the private-respondents. The private-respondents have joined much later and the applicant has been working in the NVS for a long period. Therefore, the applicant should have been shown senior to the private-respondents.
6. On the other hand the learned counsel for the respondents has submitted that the seniority of private-respondents vis-a-vis the applicant has been fixed in



accordance with Rule 5 of the Rules for Absorption of Deputationists in NVS (Annexure-R-4) issued by the Ministry of Human Resource Development vide their letter No.F.1-28/89-NVS(Admn.) dated 4th July, 1989. He has submitted that the applicant was working as UDC in his parent department before his appointment as Assistant on deputation in the NVS. He has also submitted that the respondent no.4 was holding the same and equivalent grade in his parent department, therefore, he was placed in the final seniority list at serial no.2. In the case of the applicant and respondent no.5, their seniority was fixed in accordance with their panel position, as they have not been holding the same and equivalent grade in their parent department.

7. We have given careful consideration to the arguments advanced on behalf of both the parties. We find that the applicant as well as the private respondents have been appointed as Assistants initially on deputation basis and later on absorbed in the NVS with effect from 1.5.1991. Earlier in the provisional seniority list the name of the applicant was shown at serial no.6 and private respondents 4 & 5 were shown at serial nos.11 & 10 respectively. This provisional seniority which was published on 3.11.1992 list/was prepared on the basis of date of joining of the applicant and private-respondents on deputation basis. The same has been finalised on 3.5.1993 and the applicant and private respondents have been assigned seniority in accordance with Rule 5 of the Rules for Absorption of Deputationists in NVS (Annexure-R-4). Rule 5 of the said Rules reads as under-

**"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 Samity. 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.

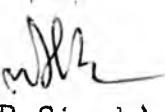
Explanatory Note -

The ~~crux~~ of the rule is that the seniority of the person absorbed permanently in the Samiti will take effect from the date of his permanent absorption. There is, however, a relaxation for the person who was already holding the post in the same or equivalent grade in his parent department before coming over to the deputation post in the Samiti. In his case, his seniority will take effect from the date of his deputation in the Samiti. Similarly, 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 his parent department, or the date of his deputation, whichever is later".

It is an admitted position that private-respondent no.4 was holding the post of Assistant in his parent department before coming on deputation to NVS, whereas the applicant was holding the lower post of UDC in his parent department. Therefore, the private-respondent no.4 has rightly been placed at serial no.2 in the final seniority list dated 3.5.1993. The seniority of the applicant and private-respondent no.5 has been fixed in accordance with their panel position which is also in accordance with the rules. In this view of the matter, the contention of the learned counsel for the applicant that as the applicant has joined earlier on deputation to the NVS he should be assigned higher seniority is rejected as it is not in accordance with the rules. Therefore, we do not find any merit in this OA.

8. In the result, the O.A. is dismissed, however, without any order as to costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman