

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 240 of 2002

Bilaspur, this the 8th day of July, 2004

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

Om Parkash Sharma,
S/o late R.D. Mal
Date of birth 15.3.1955,
Asstt. Navodaya Vidyalaya
Samiti, Regional Office,
Bhopal, r/o E/6/60
Arera Colony, Bhopal(M.P.)

APPLICANT

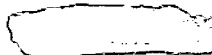

(By Advocate - Shri S. Paul)

VERSUS

1. Union of India,
through its Secretary,
Ministry of Human Resource
& Development, New Delhi.
2. The Commissioner,
Navodaya Vidyalaya Samitte
ADMN Block, Indira Gandhi
International Stadium,
I.P. Estate, New Delhi.
3. Joint Director,
Navodaya Vidyalaya Samitte,
ADMN Block, Indira Gandhi
International Stadium,
I.P. Estate, New Delhi.
4. Deputy Director,
Navodaya Vidyalaya Samitti,
Regional Office, 160
Zone II, M.P. Nagar,
Bhopal(M.P.)
5. Shri Soobe Singh Sharma,
Section Officer, Navodaya
Vidyalaya Samitti, through
Joint Director, Navodaya
Vidyalaya Samitti, ADMN
Block, Indira Gandhi
International Stadium.
I.P. Estate, New Delhi.

RESPONDENTS

(By Advocate - Shri Om Namdeo)



O R D E R

By M.P. Singh, Vice Chairman -

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

"(i)(A) Set-aside the seniority list showing the position as on 31.12.2001 (Annexure R/1) to the extent it contains the name of respondent No.5.

ii) Upon holding the promotion of Respondent No.5 is bad in law, set aside the Order dated 4.2.2002 Annexure A/1 to the extent it relates to respondent No.5

iii) Consequently, command the respondents to convene a review DPC to consider and promote the applicant w.e.f. 4.2.2002 with seniority, arrears of wages of promotional post and all other consequential benefits as if present applicant is also promoted w.e.f. 4.2.2002".

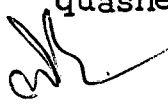
2. The brief facts of the case are that the applicant was permanently absorbed as Assistant in Navodaya Vidyalaya Samiti (for short 'NVS') vide order dated 12.8.1992 (Annexure-A-3). According to the applicant a final seniority list of Assistants governed on the strength of the NVS was published on 27.3.2000 (Annexure-A-4) wherein the name of the applicant appeared at serial no.9. Another seniority list of Audit Assistants has also been published by the respondents on 8.2.2000 (Annexure-A-6). As per the NVS Recruitment (Revised) Rules, 1995 (Annexure-A-5) only the Assistants and Audit Assistants with 6 years of regular service in the grade in the NVS are eligible for promotion as Section Officer. The private-respondent no.5 Shri Soobe Singh Sharma, who was working as Head Clerk, was not eligible for promotion to the post of Section Officer in terms of the aforesaid Recruitment Rules. But, the private-respondent no.5 has been promoted by the respondents vide order dated 4.2.2002 (Annexure-A-1), ignoring the claim of the applicant. Aggrieved by this, the applicant has filed this O.A. claiming the afore-mentioned reliefs.

3. Heard the learned counsel of both the parties.

4. As per the Recruitment Rules, the method of Recruitment, for appointment to the post of Section Officer,



is 50% by promotion failing which by transfer on deputation and/or short-term contract, and 50% by limited departmental examination failing which by transfer on deputation and/or short terms contract. The promotion to the post of Section Officer is required to be made from amongst all the Assistants and Audit Assistants with 6 years of regular service in the grade in the NVS. The learned counsel for the applicant has drawn our attention to the seniority list of Assistants published on 27.3.2000(Annexure-A-4). He has submitted that this is the final seniority list of Assistants governed on the strength of the NVS, in which the name of the applicant appears at serial no.9 as Assistant and the date of appointment as Assistant, on regular basis, of the applicant is shown as 1.5.1991. According to the learned counsel, the private-respondent no.5, who has been promoted by the respondents, was working only as a Head Clerk and as per the recruitment rules, mentioned above, the Head Clerks are not eligible for promotion as Section Officer. Similarly, he has also drawn our attention to the seniority list of Audit Assistants issued on 8.2.2000(Annexure-A-6). The learned counsel has stated that since the private-respondent no.5 is neither working as Assistant nor as Audit Assistant, his name does not figure in both the ^{aforsaid} seniority lists of Assistants, and Audit Assistants. Therefore, the private+respondent no.5 was not eligible for promotion to the post of Section Officer. He has also submitted that the seniority list of Assistants as on 31.12.2001 (Annexure-R-1) was prepared at the back of the applicant. This was not circulated and objections were not invited. The applicant was not aware of this seniority list in which the name of private-respondent no.5 has been shown at serial no.1 and the applicant has been shown at serial no.10. Since an opportunity of inviting objections/hearing has not been given to the applicant about this seniority list, this seniority list cannot be considered to be final and the same requires to be quashed. He has further submitted that in NVS there are two




cadres - one cadre consists of employees of Headquarters and Regional Offices, and another cadre consists of employees working in Vidyalayas. The first cadre, which consists of employees of Headquarters and Regional Offices, has an all India cadre and the seniority list of the said cadre was published on all India basis. The second cadre is controlled by the Regional Headquarters and their seniority is also maintained on the regional basis. The applicant belongs to the first cadre - i.e. Regional Office and Headquarters employees of the department. The learned counsel has submitted that the private-respondent no.5 was initially appointed as Lower Division Clerk and was then promoted as Head Clerk. He has, therefore, submitted that the seniority list dated 31.12.2001 (Annexure-R-1) and order dated 4.2.2002 (Annexure-A-1) are not sustainable and liable to be quashed, and the respondents be directed as Section Officer to consider the promotion of the applicant/with effect from 4.2.2002 with all consequential benefits.

5. The learned counsel for the respondents has stated that the private-respondent no.5 Shri Sube Singh Sharma had been appointed as Head Clerk/Assistant in the pay scale of Rs.1400-2600 on regular basis w.e.f.3.6.1987. Shri Sube Singh Sharma was the first regular employee of the NVS. The cadres of Headquarters & Regional Offices, and Vidyalayas employees came into existence only in 1991. The post of Head Clerk was neither included in the Vidyalayas cadre nor in the Regional Office cadre. As Shri Sube Singh Sharma was holding the post of Head Clerk w.e.f.3.6.1987, he was representing for inclusion of his name in the seniority list of Assistants. Even though his earlier representation to include his name in the seniority list of Assistants was turned down, a decision was taken by the competent authority to include the name of Shri Sube Singh Sharma in the seniority list of Assistants and accordingly a final seniority list of Assistants was issued as on 31.12.2001 in which the name of Shri Sube Singh Sharma is placed at

serial no. 1. The said seniority list was placed before the DPC for considering promotion to the post of Section Officer. As Shri Sube Singh Sharma was the senior-most, he has been considered by the DPC for promotion to the post of Section Officer, and on the basis of his seniority and fitness, he has been promoted as such. The learned counsel has also submitted that the promotion order was served personally on Shri Sube Singh Sharma and he has joined as Section Officer on 6.2.2002 at NVS RO Patna.

6. We have given careful consideration to the arguments advanced on behalf of the parties.

7. We find that as per the recruitment rules only Assistants and Audit Assistants are eligible for promotion. It is seen from the seniority lists of Assistants and Audit Assistants issued on 27.3.2000 (Annexure-A-4) and 8.2.2000 (Annexure-A-6) respectively, the name of respondent no. 5 does not figure in any of these seniority lists. The official-respondents themselves have admitted in their reply that private-respondent no. 5 was working as Head Clerk w.e.f. 3.6.1987 and has been representing regularly to include his name in the seniority list of Assistants. His representations have been rejected to include his name in the seniority list of Assistants and Audit Assistants. However, we find that the official-respondents have all of a sudden taken a decision to include the name of private-respondent no. 5 in the seniority list to designate him as Assistant and include his name in 2001. Earlier list of the year 2000, was the final list of Assistants and thereafter no other list has been issued by the respondents except the seniority list issued on 31.12.2001 (Annexure-R-1) which has not been circulated to all the concerned persons. Thus, the applicant has not been given an opportunity of hearing. Since the private-respondent no. 5 was holding the post of Head Clerk and was not included in the seniority list and, therefore, he was not eligible



for promotion as per the recruitment rules. We may also observe that since the recruitment rules are made under Article 309 of the Constitution of India, the administrative instructions or executive orders cannot take precedence over the statutory rules. Therefore, the promotion to the post of Section Officer is required to be made strictly in accordance with the recruitment rules. Since the post of Head Clerk was not included in the feeder grade for promotion to the post of Section Officer, the private-respondent was not eligible. Thus, the action taken by the respondents in promoting the respondent no.5 is liable to be quashed.

8. In the result, the OA is allowed. The seniority list issued on 31.12.2001 (Annexure-R-1) is quashed and set aside. The order of promotion of respondent no.5 as Section Officer dated 4.2.2002 (Annexure-A-1) is also quashed and set aside. The respondents are directed to circulate the seniority list dated 31.12.2001 to all concerned. The aforesaid seniority list shall be finalised after getting the objections from concerned persons by giving them an opportunity of hearing. Thereafter, the respondents are further directed to convene a meeting of the review DPC strictly in accordance with law and Recruitment Rules to consider all eligible persons for promotion to the post of Section Officer, within a period of four months from the date of communication of this order. If the applicant is found eligible and suitable for appointment, he may be granted all consequential benefits. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman.

rkv.

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अर्पित -

(1) सचिव, उच्च न्यायालय वर एम.एस.एम. जबलपुर

(2) अध्यक्ष श्री/श्रीमती/कु.....के कार्यालय S. Paul

(3) प्रवर्णी श्री/श्रीमती/कु.....के कार्यालय Om Nawale

(4) कोषपाल, एम.एम. जबलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही हेतु

उप सजिस्टार

19-7-04