

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 774 of 1999

Jabalpur, this the 16th day of February, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri G. Shanthappa, Judicial Member

Dr. Nagendra Nath Singh, S/o. Shri
Raj Nath Singh, Aged about 49 years,
Principal, Jawahar Navodaya Vidyalaya,
Rahikwara, Satna (M.P.),
R/o. C/o. Shri Rajnath Singh, Mohalla
Nawapura, Near LIC Office, Ghazipur
(U.P.).

... Applicant

(By Advocate - None)

V e r s u s

1. The Union of India, Through :
The Secretary, Education Department,
Government of India, New Delhi.
2. The Director, Navodaya Vidyalaya
Samiti, A/39, Kailash Nagar,
New Delhi.
3. The Deputy Director, Navodaya
Vidyalaya Samiti, Boring Road,
Patna (U.P.).
4. M.L. Sharma, C/o. Dy. Director,
Navodaya Vidyalaya Samiti,
Boring Road, Patna (UP).
5. U.N. Jha, C/o. Dy. Director,
Navodaya Vidyalaya Samiti,
Boring Road, Patna (UP).
6. S.K. Kulshrestha, C/o. Dy. Director,
Navodaya Vidyalaya Samiti,
Boring Road, Patna (UP). ... Respondents

(By Advocate - Shri R.M. Singroul, Junior to Shri O.P. Namdeo for the official respondents and none for private respondents)

O R D E R

By G. Shanthappa, Judicial Member -

None for the applicant. Since it is an old matter of 1999, we invoke the provisions of Rule 15 of the CAT (Procedure) Rules, 1987, and decide the case on merits.

2. By filing this Original Application the applicant has

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claimed the following main reliefs :

"(i) The applicant's name be correctly placed at serial number 87 in the gradation list dated 15.10.1993, and

(ii) that he be considered for promotion on the post of Assistant Director after constituting a Departmental Promotion Committee who should consider him for promotion, and

(iii) the applicant be deemed to have been promoted one day prior to M.L. Sharma respondent No. 4 in view of the judgment of the Supreme Court in the case of A.G. Nagnoor Vs. State of Mysore reported in AIR 1964 Mysore 229 and the judgment of the Supreme Court in the case of M.B. Bellari Vs. State of Mysore reported in AIR 1965 SC 868, and

(iv) the applicant be granted all service and financial benefits accordingly."

3. The brief facts of the case as stated by the applicant are that the applicant joined the service with the respondents as Principal on 15.11.1990. The conditions for appointment was that initially the applicant will be on probation for a period of two years from the date of appointment. The probation period was extended for a period of six months. The respondents without issuing any notices have terminated the services of the applicant vide order dated 11.06.1993. The applicant submitted his representation requesting the respondents to consider the case of the applicant and reinstate him in the service. On the basis of the representation, the committee has taken a decision and the applicant was reinstated in service vide their order dated 01.12.1993. While reinstating the applicant in the service the period of his termination to reinstatement was directed to be considered as Extra-Ordinary Leave for all purposes and will be counted as duty. He will be on further probation for one year from the time he reports for duty. The said order is at Annexure A-3. Subsequently the probation period has been declared successfully completed vide order dated

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16.6.1995. The respondents have prepared the provisional seniority list of the Principals and circulated the same on 20.10.1992. The said provisional seniority list of the officers was as on 31.12.1991. In the said list the applicant is at serial No. 87 and the respondent No. 5 and 6 are at serial No. 110 and 138 respectively. Under the said list the respondents Nos. 5 and 6 are juniors to the applicant. The final gradation list was prepared as per Annexure A-6 in which the seniority of the respondent No. 5 is at serial No. 16 and respondent No. 6 at serial No. 35. The name of the applicant is at serial No. 103. In the final seniority list the official respondents have denied the seniority of the applicant and juniors have been placed above the applicant. Hence the respondents have not followed the procedure while preparing the final seniority list which violates the rights of the applicant. All the employees from serial No. 1 to 103 are juniors to the applicant. The respondents have counted the services of the employees who are ~~in~~ ^{on} deputation and their seniority has been counted from the date of their deputation and not from the date of their absorption. The applicant submitted his representation dated 15.5.1994 raising the objections to the seniority list on the ground that his promotion on the post of Assistant Director should ^{be} ~~be~~ considered, since he is senior to Shri U.N. Jha and Shri S.K. Kulshrestha in the provisional list and accordingly the applicant should be paid his salary from 1st July, 1993 to 15th December, 1993. Since the applicant was in active service during this period, due to the fault of the respondents/authorities they have wrongly issued a letter of termination which was later on set aside by the Chairman of the Samiti. The applicant further requested in his representation that the gradation list should be prepared afresh strictly in terms

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of the law of seniority, meaning thereby that the seniority must be counted from the date of substantive appointment and not from the date on which the services of persons have been taken on deputation.

3.1. Since the applicant could not receive any communication, he had filed a writ petition before the Hon'ble High Court of Judicature at Patna Bench on 30.01.1996 in CWJC No. 450/1996. The Hon'ble High Court has directed the respondents in the aforesaid CWJC, to consider the applicant for promotion on the post of Assistant Director if he is eligible for that post after including his name in the gradation list of Principal as already prepared by the authorities concerned on 15.10.93. It was further directed to the applicant to make a representation to the authorities concerned alongwith the order and directed the respondents to dispose of the representation by passing a speaking order within a period of four weeks after filing of the representation. The applicant submitted his representation as directed by the Hon'ble High Court. The applicant submitted that originally in the provisional seniority list the applicant's name was at serial No. 87 but subsequently it was shifted to serial No. 103 with giving an opportunity to show cause against the same. This was contrary to the rules of natural justice as laid down by the Cuttak Bench of the Tribunal in the case of Sharad Kumar Rana Vs. Union of India in OA No. 26/1988, decided on 18th January, 1994. The applicant is entitled for the seniority from the date of his initial entry into the service. The juniors of the applicant are promoted as Assistant Director, whereas the case of the applicant has not been considered though he joined the service on 15.11.1990. The provisions of FR 54

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should have been considered for the purpose of counting the services, which was illegally terminated. Though the applicant had submitted reminders on 6.6.1998 and 15.5.1999 the respondents have not considered the case of the applicant. Hence the applicant has approached this Tribunal for grant of the reliefs as claimed in the OA.

4. The respondents have filed their reply denying the averments made in the OA. The main ground is that the OA is not maintainable on the ground of delay. There is a delay of 5 years in approaching this Tribunal for his grievances. The seniority list has been published on 15.10.1993 and the OA has been filed on 3.12.1999. The applicant has also not filed any application for condonation of delay. Hence the OA is liable to be dismissed on this ground alone.

4.1. The respondent No. 4 was promoted to the post of Assistant Director on 30.07.1991 and the applicant never challenged the promotion of the respondent No. 4, at the relevant time. Thus this relief also suffers from delay and laches and the application deserves to be dismissed on this ground also.

4.2. The respondents have raised one legal ground that the application is also liable to be dismissed on the ground of res-judicata, as the applicant has filed a CWP No. 450/1996(R) before the Hon'ble High Court of Judicature at Patna and the Hon'ble High Court has decided the issue raised in this OA. While deciding the representation of the applicant as directed by the Hon'ble High Court, the respondents have fixed the seniority of the applicant at Sr. No. 103 of the gradation list of Principals. Being a selection post, the promotion of Principals to the post of Assistant Director is made on seniority cum merit and

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since the applicant did not fall under the zone of consideration for promotion to the post of Assistant Director, he could not be considered for promotion. The applicant is precluded from raising the issues which have already been considered and settled by the Hon'ble High Court of Patna. After rejection of his representation on 29.7.1997, the applicant simply kept/making repeated representations and this will not give rise to any fresh cause of action. Initially the applicant was appointed on probation for a period of 2 years and his services were terminated while on probation. It was not necessary to issue any notice to the probationer before taking a decision regarding suitability of the probationer for his confirmation in service. Since the applicant did not perform his duties from 01.07.1993 to 5.12.1993, he is not entitled to draw any pay and allowances for this period on the principle of no work no pay as held by the Hon'ble Supreme Court in the case of Paluru Ramakrishnaiah Vs. Union of India, (1989)2 SCC 541. While issuing the order of reinstating the applicant it was clearly mentioned that the period of his absence from duty will be regularised by granting extra ordinary leave which shall not count for service for any purpose. Hence the applicant is not entitled for any relief as prayed in the OA and the OA is liable to be dismissed.

4.3. The applicant did not file any objection to the provisional seniority list. Accordingly the official respondents have finalised the seniority list on the basis of the services of the applicant and on other relevant factors. The respondents had decided to give benefit of absorption to some of the Principals in the interest of natural justice and respondent No. 5 and 6 were also one

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of those. In accordance with this decision, all the 18 Principals were given benefit of seniority with effect from 01.05.1989 alongwith 35 other Principals who were absorbed with effect from this date. All these Principals have been placed above those Principals who were appointed on direct recruitment basis and permanently absorbed subsequent to 01.05.1989. Since the applicant was appointed on regular basis only with effect from 16.06.1995, he has been placed junior to all the above Principals in the final seniority list. Therefore the action of the respondents is perfectly legal, reasonable and in consonance with the service law jurisprudence. The representation dated 5.6.1997 submitted by the applicant was duly considered and disposed of by passing a speaking order strictly as per the direction of the Hon'ble High Court. The post of Assistant Director is a selection post. Being a selection post, promotion of the Principals to the post of Assistant Director is made on seniority-cum-merit. The applicant was appointed as Principal on direct recruitment basis on 15.11.1990, whereas many persons had been appointed as Principal on regular basis prior to him in 1989 and 1990. The fact is that many of such regular Principals senior to the applicant, have not yet been considered for promotion due to non-availability of sufficient vacancies. Since the applicant does not fall under the zone of consideration for promotion to the post of Assistant Director, he could not be considered for promotion. Hence the OA is liable to be dismissed on merit as well as on the principles of res-judicata.

5. We have heard the learned counsel for the applicant and the respondents and carefully perused the records carefully.

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6. The admitted facts are that the applicant was appointed as Principal on 15.11.1990 and he was removed from service while he was on probation on unsatisfactory work. He was removed from service vide order dated 11.6.93 and was reinstated in service vide order dated 01.12.1993. While reinstating the applicant the respondents in their order 1.12.1993 has specifically mentioned that the services of the applicant would be treated as EOL for all purposes and will not be counted as duty. He will be on further probation for one year from the time he reports for duty at Jawahar Navodaya Vidyalaya, Lohardaga. This order has not been challenged by the applicant. The applicant has represented but the same has not been considered by the respondents.

6.1. The grievance of the applicant is regarding fixation of his correct seniority. The official respondents have prepared the provisional seniority list in which the applicant is at serial No. 87. In the said provisional seniority list the private respondents are juniors to the applicant. Since the applicant was on probation his case was not considered while preparing the gradation list. In the final gradation list the respondent No. 5 and 6 were placed at serial No. 16 and 35 respectively. The name of the applicant is at serial No. 103. Admittedly the applicant did not submit his objection to the provisional gradation list. On the basis of the objection received by the respondents on the provisional gradation list, they have prepared the final gradation list. The grievance of the applicant is that his services from the date of initial appointment i.e. from 15.11.1990 till his reinstatement i.e. 01.12.1993 for seniority and from 01.07.1993 to 15.12.1993 has to be

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treated as on service. The applicant has not obtained any orders for counting that period as on service. His service probation for was further continued for ~~one~~ year from 1.12.1993 to ~~1.12.~~ 31.12.1994. In between the same ~~seniority~~ seniority list has been prepared by the respondents, and the applicant cannot take the benefits of reinstatement into service as it was subsequent to preparation of the gradation list.

6.2. The applicant had filed a ~~civil~~ writ petition before the Hon'ble High Court and he obtained the orders to approach the competent authority for including his ~~civil~~ name in the gradation list. On the same issue the applicant has now approached this Tribunal for grant of his seniority at serial No. 87 in the gradation list dated 15.10.1993, after lapse of more than 5 years. Hence the application is not maintainable on the ground of delay under Section 21 of the AT Act. The applicant has also not challenged the order dated 1.12.1993 wherein his ~~services~~ was treated as EOL for all purposes and will not be counted as duty. He will be on further probation for one year from the time he reports in duty. Admittedly his probation period has been completed on 16.6.1995 vide Annexure A-4. His services has to be considered from the date he completed his probation period. The seniority of the applicant was fixed at serial No. 103 in the gradation list. Being selection post, the promotion of Principal to the post of Assistant Director is made on seniority-cum-merit and since the applicant did not fall under the zone of consideration for promotion to the post of Assistant Director, he was not considered. Hence the applicant has not made out any case for grant of relief to the promoted to the post of Assistant Director. The respondents have justified their action by considering the case of the applicant and reinstating him



into service as well as preparing the provisional gradation list and the final gradation list.

7. The applicant has relied on the judgment of the Hon'ble Supreme Court in the case of A.G. Naqoor Vs. State of Mysore, AIR 1964 Mysore 229 and M.B. Bellari Vs. State of Mysore, AIR 1965 SC 868. The facts of the said cases and the facts of the applicant are not similar. Hence the said judgments are not considered in this case. The applicant has also not explained the delay in approaching this Tribunal for challenging the gradation list which was published on 31.12.1991. The applicant has not filed any Misc. Application for condonation of delay, and filed this OA after lapse of more than 8 years. Hence the application is not maintainable and the same is liable to be dismissed on the ground of delay and laches. Regarding the claim of the applicant that the respondents have not followed the gradation list which was published on 31.12.1991, for promotion ^{of the applicant} to the post of Assistant Director, we find that the respondents have considered the names of the eligible candidates for the post of Assistant Director.

8. Accordingly, we find that the applicant has failed to prove that the gradation list is illegal, thus he is not entitled for any relief as prayed in the OA. Hence the Original Application is dismissed as bereft of merits. No costs.


(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman