

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of January, 2011

O.A. No. 152/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Mrs. Neelam Shekhawat
w/o Shri Brajraj Singh Shekhawat,
r/o RBI Staff Colony,
Block No.8/92, Bajaj Nagar,
Jaipur, presently working as
A.O., K.V.S., R.O., Jaipur

.. Applicant

(By Advocate: Shri R.P.Sharma)

Versus

1. Kendriya Vidyalaya Sangathan
through Joint Commissioner (Administration),
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
2. Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jeet Singh Marg,
New Delhi.
3. B.N.Vidhyashankara,
Administrative Officer,
Kendriya Vidyalaya Sangathan,
Regional Office,
Chennai (Tamil Nadu).

.. Respondents

(By Advocate: Shri V.S.Gurjar)

✓

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"In view of the above facts and ground mentioned in the body of the application, it is humbly prayed that this Hon'ble Tribunal may graciously be pleased to allow this original application and thereby quash and set aside annexure A-1, A-3, A-4, A-5 and A-7 respectively to the extent these seniority lists/orders operate prejudicial to the right of the applicant and;

- i) by an appropriate order or direction the respondent No.1 and 2 may be directed to restore seniority of the applicant by placing her name above the respondent No.3 as shown in the seniority list of Administrative Officer, dated 22.11.2006 and 15.2.2007 respectively and;
- ii) by an appropriate order or direction the respondent No.1 and 2 may further be directed to promote the applicant to the post of Senior Administrative Officer against the post earmarked for S.T.Category.

2. Briefly stated, facts so far relevant for decision of this OA are that the applicant who belongs to ST category was offered appointment on the post of Administrative Officer (for short, AO) in pursuance to OM dated 7.5.1996. It is case of the applicant that she has been working uninterruptedly on substantive basis whereas respondent No.3 came to be appointed as AO vide order dated 18.12.2000 and he joined the post on 25.1.2001 (Ann.A/8). The applicant has further pleaded that thereafter respondent No.3 made repeated representations for providing higher seniority which representation was rejected by the respondents vide order dated 1.3.2002 (Ann.A/9). To the similar effect is another order dated 29.7.2002 (Ann.A/10) and subsequent representation made by the

WY

respondent No.3 in the year 2004 was also rejected vide letter dated 9.2.2005 (Ann.A/11) and vide another letter dated 15.2.2007 (Ann.A/12). It may be stated here that representation of respondent No.3 for assigning higher seniority was rejected on the ground that seniority has been fixed in accordance with court directions. Thus, from perusal of these documents, it is evident that consistently the respondent No.3 was assigned seniority by showing the year of allotment of seniority in the grade of AO as 2001 whereas the year of allotment for the purpose of seniority in the case of applicant has been shown as 1996 and in all these documents applicant is senior to respondent No.3. However, by the impugned order dated 8/9.8.2007, the respondents again circulated a seniority list of AO as on 30.7.2007 whereby the respondent No.3 was shown at Sl.No.2 and year of allotment for seniority in the cadre of AO was mentioned as 1996 whereas the applicant whose year of allotment of seniority was also shown as 1996 and she was shown junior to respondent No.3 by mentioning her name at Sl.No.3. The applicant made representation dated 20.8.2009 against the impugned seniority list dated 8/9.8.2007 (Ann.A/1) but the same was rejected vide impugned order dated 30-1/1-2.2008 (Ann.A/3). The applicant has also placed on record another provisional seniority as on 1.4.2008 circulated on 13/19.8.2008 (Ann.A/5) whereby name of the applicant has been shown at Sl.No.2 and year of allotment of seniority in the grade has been shown as 1996 whereas in the case of respondent No.3 the same has been shown as 2001 and his name has been shown over and above the applicant in the

seniority list Ann.A/5. The grievance of the applicant is that the applicant has been appointed as AO in the year 1996 and respondent No.3 joined the post of AO on 25.1.2001, as such, respondent No.3 cannot be assigned higher seniority than the applicant. Further grievance of the applicant is that the respondent No.3 was granted promotion pursuant to the judgment rendered by the Hyderabad Bench in OA No.799/1999 prospectively and the judgment of the Tribunal does not stipulate that such appointment was to be give from retrospective date/the respondent No.3 has to be promoted notionally pursuant to his placement in the panel of AO drawn in November, 1995. Rather the judgment of the Tribunal reveals that the respondent No.3 cannot be promoted on the basis of panel drawn in November, 1995 and direction was given to promote the respondent No.3 against one of the post which was kept vacant pursuant to the interim direction given by the Tribunal, in case such post is earmarked for direct recruitment. It was further observed that in case the aforesaid post which was kept vacant does not fall for direct recruitment, in that eventuality, the applicant therein has to be promoted against future vacancy on the basis of his placement in the panel. It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The official respondent in the reply have stated that due to non-availability of second unreserved vacancy in the year 1995, the post of AO could not be offered to respondent No.3 hence action of the respondents was challenged by respondent No.3 by filing OA

No.799/99 before the CAT, Hyderabad Bench and accordingly offer of appointment was issued to respondent No.3 on 18.12.2000 and he joined at Regional Office, Patna on 25.1.2001. But for the vague reply given by official respondents that seniority of the applicant was changed by the competent authority, as such name of respondent No.3 was placed below name of Shri G.Rajan and Shri G.Rabha vide impugned order dated 15.2.2007, the fact that the representation of the applicant for assigning seniority pursuant to the Hyderabad Bench judgment was rejected vide order dated 1.3.2002, 29.7.2002, 9.2.2005 (Ann.A/9 to A/11) is not disputed by the respondents. It is further stated that pursuant to assigning of seniority vide impugned Ann.A/1, the respondent No.3 being senior most AO was offered promotion of Senior AO in terms of recruitment rules and accordingly respondent No.3 joined as Senior AO at KVS HQ in the forenoon of 20.4.2009.

4. Notice of this application was given to respondent No.3. Respondent No.3 though served not filed reply.

5. We have heard the learned counsel for the parties and gone through the material placed on record. Admittedly, the applicant was appointed as AO on 7.5.1996 whereas respondent No.3 was offered appointment on 18.12.2000 and he joined on 25.1.2001. It is also not disputed rather the official respondents have admitted in the reply affidavit that advertisement was issued by respondent Department in July, 1994 for filling up of four posts of AO, out of which two belong to general category and two for reserved category and accordingly panel of 4 persons was prepared.

WV

Against the general category name of Shri Rakesh Sharma and Shri B.N.Vidhyashankara, respondent No.3 was incorporated whereas against S category Anant Kumar Rakesh and against ST category name of Smt. Neelam, the applicant was incorporated. However, there were only 3 vacancies of AO in the year 1995. The post of AO could not be offered to respondent No.3 who belongs to general category. However, pursuant to panel so prepared by respondents, three persons except respondent No.3 were offered appointment.

Aggrieved by action of respondents, respondent No.3 filed OA No.799/1999 before the Hyderabad Bench which was decided on 13th April, 2000. The applicant has placed copy of the judgment ^{on record} along with the MA. The Hyderabad Bench in operative portion has categorically held that the applicant cannot be permitted on the basis of his empanelment in pursuance to the notification dated 29.7.1994 against the promotion quota. Thereafter the Tribunal held that the applicant cannot be made to suffer on account of four vacancies wrongly notified by the respondents and the panel prepared and further held that he may be adjusted against one post which has been ordered to be kept vacant pursuant to the interim order dated 30.6.99 and if the said post is available and earmarked for direct recruitment. The Tribunal further held that in case the vacancy so kept vacant pursuant to the interim order is not available, in that eventuality, the applicant should be posted against the direct quota of post available now or arising in future. At this stage, it will be useful to quote para-17 of the judgment, which thus reads:-

"17. As the respondents consistently failed in discharging their duties, we are of the opinion that the applicant has to be given the relief. No doubt, the applicant cannot be promoted on the basis of his empanelment in pursuance of the notification dated 29.7.94 against the promotion quota. He can be promoted only against the direct recruitment quota. As per the interim order dated 30.6.99, one post is to be kept vacant if it is unfilled as on that date. If such a post is available and earmarked for the direct recruitment, then the applicant should be posted against the direct recruitment quota of post available now or arising in future, if he has been empanelled as an OC candidate in the panel issued in pursuance of the notification dated 29.7.94 in the first or second place."

Thus, from the portion as quoted above, it is evident that the respondent No.3 could not have been granted promotion on the basis of his empanelment in pursuance of notification dated 29.7.1994 against promotion quota against which panel the respondent No.3 was given promotion. The respondent No.3 was to be granted promotion against direct recruitment vacancy if any post pursuant to interim order dated 30-6-99 kept vacant was available and if such post is not available then against the future vacancy. Admittedly, the respondents have categorically stated in the reply that respondent No.3 could not be given appointment as AO against the panel so prepared as no vacancy was available at the relevant time. Thus, facts remain that in the year 1995 when panel was prepared there was no general category vacancy available against which respondent No.3 could have been given appointment. Thus, in compliance of the direction given by the Tribunal, the respondent No.3 was rightly given appointment vide order dated 18.12.2000 against which post respondent No.3 joined on 25.1.2001. Thus, we fail to understand how respondent No.3 could

have been given seniority from the retrospective date when he was not even born on the cadre and when no such direction was given by the Tribunal to promote him notionally from back date and to assign seniority from the date when other persons were offered appointment against 1995 vacancies pursuant to notification dated 29.7.1994 and the panel prepared. Thus, the action of the respondents in assigning seniority vide impugned order dated 8/9.8.2007 (Ann.A/1) and further seniority list dated 13/19.8.2008 (Ann.A/5) are required to be quashed.

6. We wish to observe here that pursuant to the judgment rendered by the Hyderabad Bench, the respondent No.3 for the first time has made representation against the seniority list dated 1.1.2002 which representation of the applicant was rejected vide order dated 1.3.2002 on the ground that seniority already assigned to respondent No.3 at Sl.No.10 in the cadre of AO is in order as the same has been fixed taking into account the court direction and instructions issued by the Government from time to time and thereafter the respondents have rejected representation of the respondent No.3 on 29.7.2002, 9.2.2005 and 15.2.2007. We fail to understand how vide the impugned order dated 8/9.8.2007 (Ann.A/1) respondent No.3 has been assigned seniority over and above the applicant thereby assigning 1996 as the year of allotment of seniority in the grade of AO. As already stated above, once the respondent No.3 has joined in the grade of AO in the year 2001 and consistently he has been given year of allotment for the purpose of seniority as 2001, as to how vide the impugned order

Ann.A/1 the year of allotment of respondent No.3 could have been given as 1996 when he was not born in the cadre. Admittedly, he was working on the lower post of Accountant cum Inspection officer from the year 1993 onwards till his promotion in the year 2001. At this stage, we also wish to refer to another subsequent document issued by the respondents dated 13/19.8.2008 (Ann.A/5) which is provisional/common All India Seniority List of Group-A and Group-B officers of KVS as on 01.4.2008. In the said seniority list year of allotment of seniority in the present grade i.e. AO in respect of respondent No.3 has been shown as 2001 whereas that of applicant as 1996. Once the year of allotment for the purpose of seniority in respect of respondent No. 3 has been shown as 2001 and that of the applicant as 1996 how the respondent No.3 could have been placed at Sl.No.1 and applicant at Sl.No.2 of the seniority list. Thus, from the material placed on record, it is evident that someone in the department was there to help respondent No.3 out of the way while assigning seniority to respondent No.3 over and above the applicant so as to extend undue benefit of granting promotion to respondent No.3 on the post of Senior AO. In fact the patent wrong action on the part of the authority who has issued the impugned order Ann.A/1 has resulted into granting promotion to respondent No.3 on the post of Senior AO w.e.f. 20.4.2009 whereas as per the submissions made by the learned counsel for the applicant, the applicant has been granted such promotion w.e.f. 26.7.2010. We do not wish to comment further on the action of the authority who has passed by impugned order dated 8/9.8.2007 (Ann.A/1) and it is

for the appropriate authority in the department to look into the matter. However, we are of the firm view that the applicant has made out a case for quashing the impugned seniority list dated 8/9.8.2007 (Ann.A/1), letter dated 30-1/1.2.2008 (Ann.A/3) letter dated 28.4.2008 (Ann.A/4), seniority list dated 13/19.8.2008 (Ann.A/5) and letter dated 16/18.2.2009 (Ann.A/7) whereby respondent No.3 has been shown senior to the applicant. Accordingly, these are quashed and set aside. Respondent No.3 shall be assigned seniority based upon his appointment in the cadre of AO in the year 2001 and respondents are directed to restore the seniority of the applicant in the light of the observations made above in conformity with their own order dated 15.2.2007 (Ann.A/12). The respondents are directed to grant promotion to the applicant against the post of Senior AO based upon the seniority list dated 15.2.2007 from the date when such promotion was granted to respondent No.3 notionally w.e.f. 20.4.2009 with all consequential benefit except back wages and actual benefits w.e.f. 26.7.2010 from which date the applicant has occupied the post of Senior AO. The respondents shall take follow up steps in the aforesaid terms within a period of two months from the date of receipt of a copy of this order.

7. With these observations, the OA is allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/