

OA No.060/01164/2014
(Manohar Lal v. UOI & Ors.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No.060/01164/2014 &
MA No.060/00036/2015
MA No.060/00202/2015

Date of decision: 4.11.2015

**Coram: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Manohar Lal S/o Sh. Gian Chand, aged 56 years, Associate Professor, Govt. College of Art, Sector-10, Chandigarh.

-Applicant

(By Advocate Shri Rohit Seth)

-Versus-

1. Union of India through Secretary, Department of Education (Technical-I), Central Secretariat, New Delhi.
2. The Secretary, Technical Education, Sector-9, Chandigarh Administration.
3. The Advisor to the Administrator, Sector-9, Union Territory, Chandigarh.
4. Dr. S.S. Dahiya, Director, State Council of Education and Research Training, Sector-32, Chand

-Respondents

(By Advocates Shri A.L. Nanda & Shri S.S. Pathania)

ORDER**Mr. Sanjeev Kaushik, Member (J):**

By means of the present Original Application applicant invokes the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, challenging an order dated 18.12.2014 (Annexure A-6) vide which respondent no.4 was given additional charge of the post of Principal, Govt. College of Art, Sector-10, Chandigarh

2. The facts, which led to filing of the present Original Application, are that the applicant herein Shri Manohar Lal initially joined respondent-department as ad hoc Lecturer on 09.01.1990 through a positive act of selection. The said post was later on re-designated as Assistant Professor. Thereafter sometime in the year 1996 he was granted senior grade and selection grade in the year 2002. Being the senior-most Associate Professor in the respondent college he was placed at serial no.1 in the seniority list of Lecturers as on 19.11.2010. While he was working as Associate Professor he was first time given the additional charge of the post of Principal in addition to his own duties vide order dated 26.05.2009, which he continued upto December, 2009. Subsequently, he showed his

unwillingness to continue as such due to family problem. However, vide order dated 06.06.2012 he was again given charge of the post of Principal being the senior-most Associate Professor and he continued as such till 19.12.2014. As per the Government College of Art, Chandigarh Administration (Principal) Recruitment Rules, 1984 he was eligible for regular appointment to the post of Principal in the year 2008. It is his case that the Chandigarh Administration has not taken any step to fill up the post of Principal by appointing a regular incumbent. Subsequent to that, Chandigarh Administration notified new Rules, i.e., Government College of Art, Chandigarh Administration Principal (Group 'A') Recruitment Rules, 2010 (for brevity, 2010 Rules) and under those Rules the post of Principal is to be filled up 100% by direct recruitment, failing which by way of deputation basis from the officers of the Central Government holding analogous post on regular basis in the parent cadre or department and possessing the educational qualification and experience prescribed for direct recruitment. It is the case of the applicant that in total disregard of the 2010 Rules and without following the fair procedure, the respondents vide impugned order dated 18.12.2014 gave additional charge of the post of Principal of respondent Art

college to respondent no.4, in addition to his own duties as Director, State Council of Education and Research Training, Sector-32, Chandigarh. Hence the present Original Application.

3. The respondents have filed their written statement wherein they submitted that the impugned order, giving additional charge of the post of Principal to respondent no.4 is only a stop gap arrangement till the post is filled up through UPSC on regular basis as per 2010 Rules. It is admitted that the applicant was given charge of officiating Principal being the senior-most faculty member but subsequently in terms of the recommendation of a committee constituted for conducting enquiry against one Shri Sanjeev Kumar, Assistant Professor of respondent college, the respondents decided not to give additional charge of the post of Principal to the applicant, as the said committee has recorded an adverse finding against him.

4. The applicant has filed rejoinder, wherein he contradicted the averments made in the written statement and reiterated what has been stated in the OA. Thereafter some pleadings were exchanged between the parties.

5. Miscellaneous Application no.060/00036/2015 has also been filed by one Shri Anand Kumar Sharma, Assistant Professor working in the same very college for impleading him as a party-respondent, as the decision is likely to affect his right.

6. We have heard Shri Rohit Seth, learned counsel on behalf of the applicant, Shri A.L. Nanda, on behalf of the respondents and allowed Shri S.S. Pathania to assist this Court in the larger interest.

7. Shri Seth, learned counsel appearing on behalf of the applicant vehemently argued that the impugned order dated 18.12.2014 giving additional charge of the post of Principal of respondent college to respondent no.4 is nothing but a colourable exercise of power at the hands of the official respondents. He submitted that the claim of the applicant for giving him additional charge of the post of Principal was solely rejected on the ground that some adverse finding was recorded by the committee which was constituted to enquire about the conduct of one Shri Sanjeev Kumar, Associate Professor in respondent college. Since the applicant was not associated and was not called before giving an adverse finding, therefore this

finding cannot be relied upon to reject his claim. He submitted that in terms of the orders passed by this Tribunal in the earlier round of litigation in OA no.109-CH-2009 decided on 05.03.2009 where the applicant was impleaded as respondent no.6, a direction was given to the respondents to consider the persons from the same very College, if they decide to give additional charge of the post of Principal as per seniority, which was later on confirmed by the Hon'ble jurisdictional High Court.

8. Per contra, Shri Nanda, learned counsel appearing for the official respondents vehemently opposed the prayer of the applicant and submitted that since he is not eligible in terms of 2010 Rules for appointment to the post of Principal of respondent Art College, therefore his case was not considered for giving additional charge of the post of Principal of respondent Art College. He further submitted that even otherwise applicant cannot be considered for giving additional charge in view of the adverse remarks against him while discharging the functions of Principal as an additional charge.

9. Shri Pathania, learned counsel appearing on behalf of the intervener submitted that despite there being judicial pronouncement by this Court to fill up the post of Principal in

terms of rule formation respondents failed to carry out the direction and keeping in view the fact that the respondent Art College is not having a regular Principal since 1989 the official respondents are adopting pick and choose policy to adjust their blue-eyed boys by giving them additional charge of the post of Principal.

10. We have given our thoughtful consideration to the entire matter and perused the pleadings on record with the able assistance of the learned counsels appearing for the respective parties as also the official record produced by the respondents.

11. Though pleadings suggest that the applicant has taken an additional plea that the post of Principal is to be filled up as per 1984 Rules, but at the time of arguments applicant did not utter a single word in support of the above contention, therefore we are not deliberating on the above issue and we are considering whether the impugned order dated 18.12.2014, giving additional charge to respondent no.4 who does not possess the qualification required for the post is justifiable or not?

12. Conjunctive perusal of the pleadings makes it clear that the respondents themselves have admitted that respondent

no.4, who is Director, State Council of Education and Research Training, Sector-32, Chandigarh is not having the requisite qualification prescribed for the post in question in terms of 2010 Rules. The respondents have also not shown whether before passing the impugned order they have adopted any procedure whereby calling applications from other eligible persons for giving additional charge of the reputed Art College of respondents.

13. On perusal of the official record produced before us by the respondents we find that while considering the case of private respondent for giving additional charge of the post of Principal the respondents have not considered the case of the applicant along with other faculty members of the respondent Art College while importing respondent no.4, Dr. S.S. Dahiya. Moreover, the noting dated 26.11.2014, relied upon by the respondents, does not suggest application of mind. We may reproduce here the aforesaid noting for the sake of convenience:

"With regard to observations of worthy AA dated 10.11.2014 on Sr. No.2 at NP/12 ante; it is submitted that action as suggested may take sometime for execution. The conditions prevailing in Govt. College of Art are not under the control of Sh. Manohar Lal,

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Officiating Principal (applicant herein). There are complaints and chargesheets against a few faculty members who are vitiating the atmosphere of the Institute. There is a lot of bickering going on among a few faculty members who are not accepting Sh. Manohar Lal as the Officiating Principal. There is a need for an urgent replacement to control the situation which seems to be going out of mind.

In view of the above, it is proposed that the charge of the Officiating Principal for the time being may be given to an administrator who can control the affairs of the Institute in a much better way. It is therefore, proposed that Dr. S.S. Dahiya, Director SCERT may be given the additional charge of Principal of GCA till the time regular recruitment is done for the post of Principal.

It is also proposed that a fresh requisition may be sent to the UPSC for filing up the post of Principal by direct recruitment."

14. Though the earlier orders passed by this Court were under the 1984 Rules, which were applicable at that time when the applicant was eligible for appointment to the post of Principal but the pith and substance of those orders passed by this Court and by the Hon'ble jurisdictional High Court led to one conclusion that the Hon'ble High Court has held that if the UT Administration decide to give additional charge of the post of Principal of the Art College they are supposed to give the charge to the insiders of the college. Though 1984 Rules were replaced by 2010 Rules, but they do not suggest in any way that if the respondents have to give additional charge of the

post in question then they can bring in an outsider to work as Principal, who is neither eligible nor familiar to the functioning of the College. As stated above, the noting, as reproduced above, which was approved by the Adviser, does not suggest that they have considered the cases of other Lecturers, though juniors to the applicant, while considering the case of respondent no.4 for giving additional charge of the post in question. Thus, it is obvious that those who are working in the respondent Art College have a heart-burning to have an ineligible person to work as Principal than those who are working in the respondent College for the last more than 30 years. Therefore, we are in agreement with the submission made at the hands of the applicant that appointment of private respondent no.4 cannot sustain. Accordingly the same is quashed and set aside. The matter is remitted back to the respondents to fill up the post of Principal through UPSC as soon as possible as per the rule formation. Till then they may consider giving the current charge to any one of the existing faculty members of the respondent college who are eligible and who have nothing adverse against them in terms of their conduct. This arrangement can continue till a regular incumbent joins. In case the respondents come to a situation

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where they are unable to find a suitable person from the eligible flock, they can resort to making appointment of a person from administrative side as a short gap arrangement so that the administrative work of the College does not suffer.

The O.A stands disposed of in the aforesaid terms.

15. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(UDAY KUMAR VARMA)
MEMBER (A)

Chandigarh

Dated: 6.11.2015

'San.'