

**Central Administrative Tribunal
Principal Bench**

**OA No.2194/2010
OA No.1084/2011
OA No.2767/2010**

New Delhi, this the 2nd day of November, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

1.OA No.2194/2010

Roop Ram Meena
S/o Shri Mangya Ram Meena
R/o GB-48, Pul Prahladpur,
New Delhi 110 044. ... Applicant.

(By Advocate : Shri Ashish Nischal)

Vs.

1. Govt. of NCT of Delhi
through Secretary Education
Department of Education
Delhi.
2. Director
Department of Education
Govt. of NCT of Delhi
Old Secretariat,
Delhi.
3. Sh. Anil Kumar Kispotta
(Emp ID No.20000827)
Vice Principal
GBSS, J-Block, Saket,
New Delhi
School ID No.1923074.
4. Sh. Kailash Singh Meena
(Emp. ID No.20000786)
Vice Principal
SBV, Mandavli,
New Delhi
School ID No.1002001.

5. Sh. Chiranjeevi Meena
Emp. ID No.19930284
Vice Principal, G. Co-ed SS Nagli,
Sakrawati, New Delhi.
School ID No.1822254.
6. Sh. Kamlesh Meena
Emp. ID No.19930266
Vice Principal, SV Co-ed Janakpuri,
Poshangi Pur,
B-1, New Delhi
School ID No.1618003.
7. Sh. Lakhan Lal Meena
Emp. ID No.20005045
Vice Principal, G. Co-ed, SSS, Dera,
New Delhi,
School ID No.1923023.
8. Sh. Purshottam Meena
(Emp. ID No.20000390)
Vice Principal, G. Co-ed SSS, Khara Dabur,
New Delhi
School ID No.1822031.
9. Sh. Hariom Meena
(Emp ID No.20000402)
Vice Principal, GBSS, Haidarpur,
New Delhi
School ID No.1309272.
10. Sh. Hari Das Meena (Emp ID No.19920173)
Vice Principal, GBSSS No.1, Sector-4,
Dr. Ambedkar Nagar, New Delhi.
School ID No.1923008. ... Respondents.

(By Advocate : Ms. Rashmi Chopra and Shri Amit Anand)

2. OA No.1084/2011.

Sh. Sunil Kumar
R/o 55 A, Pocket-C,
Mayur Vihar, Phase-II,
Delhi 110 091. ... Applicant.

(By Advocate : Shri Ashish Nischal)

Vs.

1. The Government of NCT of Delhi through its Chief Secretary Having its office at Players Building New Delhi.
2. The Director Directorate of Education Government of NCT of Delhi Old Secretariat, Delhi.
3. The Joint Director of Education Government of NCT of Delhi Directorate of Education E.II Branch, Room No.223 A, Old Secretariat, Delhi.
4. Sh. Dharmendra Kumar
PGT, Rajkiya Sarvodaya Bal Vidyalaya
East Vinod Nagar,
Delhi.
5. Sh. Rishi Pal
PGT, Rajkiya Sarvodaya Bal Vidyalaya
East Vinod Nagar,
Delhi.
6. Sh. Ashwani Kumar
PGT, Govt. Boys Sr. Secondary School,
Block 13, Geeta Colony,
Delhi.
7. Sh Jagpal Singh Chahal
PGT, Sarvodaya Vidyalaya
Rani Garden,
Delhi.
8. Sh. Om Singh
PGT, Govt. Boys Secondary School,
Block 13, Geeta Colony,
Delhi. ... Respondents.

(By Advocate : Ms. Rashmi Chopra and Shri Amit Anand)

3. OA No.2767/2010.

Shri Raj Kumar
 S/o Shri Om Prakash
 R/o 55D Pocket-F,
 Mayur Vihar, Phase II
 Delhi 110 091.

Employed as PGT (Math-Male)
 EID No.19891212
 RSBV East Vinod Nagar,
 Delhi 110 009.

At present working as
 Vice Principal
 SKV, Gokulpuri,
 Delhi-94.

... Applicant.

(By Advocate : Shri Ashish Nischal)

Vs.

1. The Government of NCT of Delhi
 through its Chief Secretary
 Delhi Secretariat
 Delhi 110 002.
2. Govt. of NCT of Delhi
 Through its Secretary
 Ministry of Education
 Delhi Secretariat
 Delhi.
3. Director
 Directorate of Education
 Old Secretariat
 Civil Lines,
 Delhi 110 054.
4. Dharmendra Kumar Gaur
 Posted at S.B.V.
 East Vinod Nagar,
 Delhi School ID No.1002007.

5. Amar Singh
Posted at SBV,
Laxmi Nagar
Delhi 92 School ID 1003001
6. Rajender Kumar
Vice Principal
Posted at GBSS
Defence Colony,
Varun Marg,
Delhi, School ID 1924014.
7. Shri Sunil Kumar
Vice Principal
Posted at GBSS,
New Ashok Nagar (E) Delhi
School ID 1002187.
8. Om Singh
Vice Principal GBSSS
Geeta Colony,
Block 13,
Delhi.
9. Kuldeep Singh
Vice Principal
SBV Sarojini Nagar No.1,
School ID SCH 1719006. ... Respondents.

(By Advocate : Ms. Rashmi Chopra and Shri Amit Anand)

: O R D E R(ORAL) :

Justice Permod Kohli, Chairman:

The issues being common and identical, these OAs (OA Nos.2194/2010, 1084/2011 & 2767/2010) are being disposed of by this common order.

2. In OA No.2194/2010, the applicant, Roop Ram Meena, was initially appointed to the post of Trained Graduate Teacher (TGT) on

24.12.1991 against the reserved category of Scheduled Tribe (ST). He was promoted on ad hoc basis to the post of PGT (Political Science) vide Office Order No.106 dated 08.12.1997. It is stated that the applicant was fully eligible for such promotion and entitled for benefit of reservation available to ST TGTs. In accordance with the recruitment rules, the post of PGT is to be filled up 75% by promotion and 25% by direct recruitment. The post against which the applicant was promoted as PGT vide order dated 08.12.1997 was a regular vacancy. The promotion order contains following stipulations:-

“The promotion of all teachers who have been assigned tentative seniority or have not been assigned seniority at all, will be fully subject to assignment of final seniority in the feeder cadre from which being promoted. In such cases the Dy. Director of Education may verify their date of appointment as TGT from the service book before any offer of promotion is made.

These promotions have been given on the emergent basis, for the convenience of the students, promotees have been sent in accordance with the vacancies available district wise, so keeping in view the student’s interest Districts of the promotees will not be changed.”

3. The applicant joined the promotional post. No DPC was held for regularising the said promotion and it was only in the year 2000 that the applicant was promoted on regular basis vide office order dated 14.07.2000 on the recommendations of the Departmental Promotion Committee held on 30.06.2000. A tentative seniority list of PGTs (Male & Female) appointed, promoted and absorbed on regular basis between 01.04.1990 to 31.03.2001 was issued vide office order dated 04.12.2002. The applicant was placed at Sl. No.1597 showing

his date of panel as 08.12.1997, i.e., the date of ad hoc promotion and his date of promotion was shown as 14.07.2000. The applicant's seniority was fixed on the basis of his regular promotion w.e.f. 14.07.2000. It is alleged that the TGTs who were promoted on *ad hoc* basis in the year 1996 were granted seniority by treating them having been promoted from the date of panel, i.e., even prior to their date of *ad hoc* promotion instead of regular promotion. While issuing tentative seniority list, all PGTs' objections were invited. The applicant made representation dated 23.12.2002 for fixing his seniority by treating his date of promotion as 08.12.1997 and not 14.07.2000. The said representation got no response. It is stated that without finalising the objections, further promotions were made from the post of PGTs to the post of Vice Principal on the basis of tentative seniority list.

4. All the posts of Vice Principal are 100% promotional posts PGTs being feeding channel. Without finalising the PGTs seniority list, office order dated 31.12.2008 was issued promoting PGTs to the post of Vice Principal on the basis of review DPCs held on 24.10.2008. The applicant was not considered for promotion to the post of Vice Principal. It is averred that in the aforesaid promotion order, 26 candidates were promoted to the post of Vice Principal against the reserved vacancies of ST. Out of 26, 20 are direct recruits and only 6 are promotee PGTs. 20 direct recruits belonging to ST category were

appointed in the year 1999, i.e., subsequent to the date of ad hoc promotion of the applicant to the post of PGT (Political Science). Having ignored for promotion vide impugned order dated 31.12.2008, the applicant made another representation dated 27.01.2009 for fixation of his seniority by treating his date of promotion as 08.12.1997. Even this representation was not attended to. The applicant filed an RTI query and in reply to the same vide letter dated 26.06.2009 it was informed that the seniority list of male PGT appointed/promoted between 1994 to 2001 is yet to be finalised. Further information provided in the RTI query is that persons who were promoted on ad hoc basis on 17.06.1996 have been treated as having been regularised from the back date, i.e., 25.02.1996. It is mentioned that those who were promoted on ad hoc basis on 17.06.1996 were also regularised by the same office order dated 14.07.2000 by which the applicant was regularised. Another amended tentative seniority list of Lecturers (male) having Seniority Nos.1043 to 2316 appointed/promoted between 01.04.1994 to 31.03.2001 was issued vide Office Order dated 21.07.2009. Objections were again invited in respect to this amended tentative seniority list.

5. It is stated that the applicant's seniority was, however, downgraded in this seniority list from 1597 to 2287. The applicant made representation in the prescribed format through proper channel which was forwarded by the Principal of the School vide letter dated

25.07.2009. The applicant claim seniority from the date of his *ad hoc* promotion, i.e., 08.12.1997 and not from the date of regularisation, i.e., 14.07.2000. Reference was also made to the seniority granted on *ad hoc* promotion to similarly situated persons w.e.f. 17.06.1996. Aggrieved of the denial of seniority and promotion to the post of Vice Principal, the applicant filed OA No.2819/2009 before this Tribunal. This OA was disposed of vide order dated 27.01.2010 with the following directions:-

“11. As we do not find any negative equality in the claim of the applicant, we dispose of this OA with a direction to the respondents to consider the objections raised by the applicant and in the light of invidious discrimination alleged by him, dispose of his claim by passing a speaking order within a period of two months from the date of receipt of a copy of this order. It goes without saying that in case of settlement of seniority, applicant shall be considered for promotion and in such an event, interim direction given by the Tribunal to keep one post of Vice Principal vacant shall be maintained by the respondent till the final decision is taken, no costs.”

6. The respondents issued another order dated 30.01.2010 granting promotion to the PGTs/Lecturers (male & female) to the post of Vice Principal on regular basis on the basis of recommendations of the DPC held on 29.12.2009 without deciding the objections of the applicant. The objections filed by the applicant were, however, rejected vide order dated 16.04.2010.

7. The applicant has also mentioned that one Brij Lal Meena was granted seniority at Sl. No.2285 as against the applicant's seniority at 2287. The said Brij Lal Meena was lower in merit in the selection test

for the post of TGT and also joined later than the applicant to the post of TGT. In support of this contention, he has placed on record copy of the reply to RTI query given to one Shri Murari Lal Meena vide letter dated 22.04.2010. Claiming discrimination and hostile treatment in denial of seniority and promotion to the applicant in violation of law, he has sought the following reliefs:-

“a) Allow this Application.

b) Quash the impugned office orders bearing No.F.2(5)(9)/2002/E.II/9968-10068 dated 4.12.02 notifying tentative seniority list of PGT's (Male & Female) separately appointed/promoted between 1.4.90 to 31.3.2001 as well as impugned office order bearing No.DE.2(5)(20)/E-11/2006PGT (M)/24330-336 dated 21.7.09 notifying amended tentative seniority list of lecturers (male) seniority No.1043 to 2316 appointed/promoted between 1.4.94 to 31.3.2001 and impugned office order bearing No.F.43(1)2007/Edn./Prom/2344-2370 dated 31.12.2008 and order bearing No.DE(2)(2)(18)E-II/09/275-279 dt. 16.4.10 whereby the claim of the applicant for grant of seniority as PGT w.e.f. 8.12.97 and consideration for promotion to the post of Vice Principal was declined as well as Order No.43/1/08-09/Sectt.Br.Edu/DPC/Phase-III/140-245 dt. 30.1.2010 granting promotions to PGTs/Lecturers (Male & Female) to the post of Vice Principal without deciding the objections of the applicant with regard to notified tentative seniority list qua his seniority and also thus without finalizing the seniority list as well as the proceedings of review DPCs held on 16.12.2005, 24.10.08, 29.12.2009 & 16.12.2009 as well as consequent promotions made to the post of Vice Principal from amongst the PGTs on the basis of recommendations of the said DPCs and review DPCs by following the tentative seniority list under challenge. Consequently direct the respondents to undertake the process of promotion to the post of Vice Principal from amongst the eligible PGTs after finalizing the seniority list by treating the applicant promoted to the post of PGT w.e.f. 8.12.97 when he was granted ad hoc promotion on parity with

the PGTs who were granted *ad hoc* promotion on 17.6.96, 12.9.96 & 5.11.96.

c) Quash the impugned promotions to the post of Vice Principal made vide impugned office orders bearing No.F.43(1)2007/Edn./Prom/2344-2370 dated 31.12.2008 and No.43/1/08-09/Sectt.Br. Edu/DPC/Phase-III/140-245 dated 30.1.2010 as well as the proceedings of review DPCs held on 31.12.2008 & 29.12.2009 which recommended the impugned promotions and consequently direct the respondents to convene a fresh DPC after granting the applicant seniority on the basis of his ST category and his date of birth i.e. 8.12.97 on which the applicant was granted *ad hoc* promotion for PGT (P.Sc.) and accordingly promote him to the said post of Vice Principal with all consequential benefits from the date of promotion of others who were promoted to the said post of Vice Principal vide impugned office order bearing No.F.43(1)2007/Edn./Prom/2344-2370 dated 31.12.2008 & No.43/1/08-09/Sectt.Br.Edu/DPC/Phase-III/140-245 dt. 30.1.2010.

d) Grant any other relief which Your Lordship deem fit and proper in the circumstances of the case.

e) Award the cost."

8. OA No.1084/2011 has been filed by one Sunil Kumar. This OA was earlier dismissed vide order dated 06.01.2012. The applicant in this case also belongs to Scheduled Caste (SC) category and was appointed as TGT, and joined on 30.09.1989. He was promoted on *ad hoc* basis as Lecturer, i.e., PGT vide order dated 08.12.1997. He joined the said post on 30.12.1997. He was regularized as PGT on 14.07.2000. He is aggrieved of the seniority list dated 05.03.2010 whereby his seniority has been fixed w.e.f. his regular appointment as PGT, i.e., 14.07.2000 instead of 08.12.1997.

9. OA No.2767/2010 has been filed by one Raj Kumar who belongs to Scheduled Caste (SC) category. This applicant was initially appointed as TGT (Maths-Male) on 12.10.1989. He was promoted as PGT/Lecturer (Maths-Male) on *ad hoc* basis vide order dated 28.02.1997. He joined on the said post on 04.04.1997. He was regularised as PGT vide order dated 14.07.2000. He is also aggrieved of the provisional seniority list (Annexure A-3) whereby his juniors were allegedly shown senior to him. He filed objections dated 01.02.2007 claiming his seniority from the date of his initial promotion on *ad hoc* basis. Another amended tentative seniority list of PGT/Lecturers (Maths-Male) was issued on 21.07.2009 in which applicant's seniority is again fixed below his juniors. He filed objections on 15.09.2009 claiming seniority at the appropriate place. However, without considering his representation, a final seniority list of PGTs/Lecturers was issued on 05.03.2010 in respect of candidates appointed between 01.04.1994 to 31.03.2001. It is stated that the respondents called ACRs in respect of SC/ST candidates who were appointed as Lecturers up to January, 2000 vide order dated 13.07.2010 for promotion to the post of Vice Principal. His name does not appear in the list of candidates whose ACRs have been asked for. This OA has been accordingly filed claiming seniority w.e.f. the date of his initial appointment on *ad hoc* basis under SC category and

fixation of seniority accordingly, and also for promotion to the post of Vice Principal against the SC category vacancies.

10. It is the common case of the applicants that their initial promotion on ad hoc basis is against the clear vacancies and all of them were eligible for promotion and on their regular promotion on 14.07.2000, they are entitled to seniority from the date of their ad hoc promotions.

11. Counter affidavits have been filed in all the above OAs. Counter reply in OA No.2194/2010 is being noticed hereunder. The respondents have taken a stand that the initial promotion of the applicant was purely *ad hoc* and on emergent basis till regular promotions are made vide order dated 08.12.1997. The said promotion order contains following stipulations:-

“these promotions confer upon him no right whatsoever for regular promotion, seniority, confirmation etc. in the lecturer grade.”

It is, however, admitted that the applicant was regularised as PGT w.e.f. 14.07.2000 vide orders of the even date along with other PGTs promoted with him purely on ad hoc and on emergent basis on 08.12.1997. It is accordingly stated that the applicant was assigned Seniority No.2287 in the tentative seniority list of PGTs (Male) 1043 of 2316 for the Block year 1994-2001 circulated vide department's circular dated 21.07.2009. Reference is also made to the OA

No.2819/2009 filed by the applicant claiming seniority and the directions passed therein. It is stated that the case of the applicant was deliberated by the department in detail and all allegations were dealt with and rejected vide speaking order dated 16.04.2010. It is stated that a total 430 Male PGTs were promoted on *ad hoc* and emergent basis in the year 1996, 1997 and 1998 including the applicant, but no one, promoted on *ad hoc* basis, was granted regularisation from an earlier date. At the same time, it is admitted that the "group of Teachers promoted on officiating basis in 1996 were regularised w.e.f. 25.02.1996, though not in conformity with the instructions of DoP&T, but have been regularised with retrospective date". It is further stated that no junior to the applicant has been regularised from retrospective date. It is mentioned that the applicant was allotted Seniority No.2287 in the final seniority list of PGTs (Male) for the Block Year 1994-2001 issued on 05.03.2010 and the last person from ST category (Male) promoted to the post of Vice Principal is ranked at Serial No.2267. Therefore, none of applicant's junior in the PGT (Male) has been promoted to the post of Vice Principal.

12. We have heard learned counsel for the parties.

13. The factual aspects in all the above OAs are not in dispute. The claim of the applicants is for fixation of their seniority from the date

of their initial *ad hoc* promotions to the posts of PGTs. It is also not in dispute that all the applicants were eligible at the time of their ad hoc promotions. It is also admitted position, as is evident from their promotion order that their initial promotion was against the available vacancies. The stipulations contained in promotion order dated 08.12.1997 clearly indicate that promotion of all teachers who have been assigned tentative seniority or have not been assigned seniority at all will be fully subject to assignment of final seniority in feeder cadre from which they are promoted. Dy. Director of Education was required to verify their date of appointment as TGT from the service book before any offer of promotion is made. It is also stipulated that promotions have been made on emergent basis for convenience of the students and the promotees have been sent in accordance with the vacancies available district wise. This stipulation clearly demonstrate that the initial promotions of the applicants on ad hoc/emergent basis was against the available vacancies and their seniority was to be later determined in accordance with their seniority in the feeding cadre of TGT. Insofar as the seniority of promotees in the feeder cadre is concerned, there is no dispute that none of them has been promoted on *ad hoc basis* in contravention of the seniority in the feeding channel. All the promotee-applicants have been finally regularised. The issue whether they are entitled to seniority from the

date of their ad hoc promotions on being regularised is no more *res integra*.

14. A Constitution Bench of the Hon'ble Supreme Court in case of *The Direct Recruit Class-II Engineering Officers' Association and Others vs. State of Maharashtra and Others* [AIR 1990 SC 1607] has dealt with this issue. The case of the applicants is covered by conclusion (a) of the said judgment, which reads as under:-

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.”

The mere fact that initial promotion of the applicants as PGT was on *ad hoc* and on emergent basis, and the promotion order contain a stipulation that they will have no right of regularisation, cannot be set up as a ground to deny the applicants seniority from the date of their initial promotion which was based upon their eligibility against the clear available vacancies.

15. The respondents have admitted in the reply that some of the *ad hoc* promotees of 1996 were given seniority retrospectively by regularising their promotion from the date anterior to their actual promotion. How the applicants can be denied similar treatment and what are the distinguishable features is not forth coming from the reply or any of the record produced by the respondents. The case of the applicants is squarely covered by the Constitution Bench

judgment in *The Direct Recruit Class-II Engineering Officers' Association and Others* (supra).

16. These OAs are accordingly allowed with the following directions:-

- (i) The respondents to grant the benefit of seniority to the applicants from the dates of their initial *ad hoc* promotions, i.e., w.e.f. 08.12.1997 in case of applicant of OA No.2194/2010, w.e.f. 30.12.1997 in case of applicant of OA No.1084/2011 and w.e.f. 04.04.1997 in case of applicant of OA No.2767/2010.
- (ii) The impugned tentative seniority list dated 04.12.2002, amended tentative seniority list dated 21.07.2009 and the final seniority list dated 05.03.2010 are hereby quashed to the extent the applicants have been allocated seniority from the date of their regular promotion to the post of PGT w.e.f.. 14.07.2000.
- (iii) The respondents are directed to fix seniority of applicants in OA Nos.2194/2010, 1084/2011 & 2767/2010 from the dates of their initial *ad hoc* promotions, i.e., 08.12.1997, 30.12.1997 and 04.04.1997 respectively.
- (iv) As a consequence of the changed position of their seniority, applicants shall be considered for their promotion to the post of Vice Principal taking into

consideration their re-fixed seniority. Review DPC be held for this purpose within the period of two months.

(v) If found fit by Review DPC, the applicants shall be promoted to the post of Vice Principal. The applicants shall not be entitled to any arrears on the promotional post of Vice Principal from such retrospective promotions. However, their salary shall be fixed giving them the benefit of such retrospective promotions. The actual financial benefit of promotion would be from the date, promotions are made and the incumbents joined their promotional post. No order as to costs.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/