

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.3620/2015
M.A. No.3272/2015

this the 24th day of October 2017

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

Vikas Bansal S/o Prem Chand Bansal,
TGT Social Science, GBSSS, Raghbir Nagar,
J.J. Colony, New Delhi-27.

... Applicant

(Mr. Ranjit Sharma, Advocate)

Versus

1. Government of NCT of Delhi
through its Chief Secretary,
New Secretariat, ITO,
New Delhi.
2. Director of Education,
Government of NCT of Delhi,
Establishment-III Branch,
Old Secretariat, Delhi.
3. South Delhi Municipal Corporation
through its Commissioner,
Civic Centre, S.P. Marg,
New Delhi. ... Respondents

(Mr. R. K. Jain and Mr. K. M. Singh, Advocates)

O R D E R

Justice Permod Kohli:

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Through this application the applicant has sought condonation
of delay of 325 days in filing the OA. It is stated that the request of

the applicant for repatriation was rejected on 13.11.2013. The applicant came to know that the Tribunal rejected similar OAs being OA No.2168/2011 and 1657/2006. Having known the view of the Tribunal, the applicant did not attempt to challenge the impugned order. It is mentioned that the applicant later came to know in the first week of September, 2015 that the Tribunal had reviewed its order in OA No.2168/2011 vide judgment dated 29.10.2014, and placed the matter before a larger Bench, and thereafter the present OA came to be filed. Delay is sought to be condoned on that basis. The MA is duly supported by an affidavit. For the reasons recorded therein, same is allowed and the delay in filing the OA is condoned.

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2. The applicant joined the erstwhile MCD as an Assistant Teacher on 02.11.2002. The promotional channel for Assistant Teacher in MCD was to the post of Principal, School Inspector (subject to qualification) and Assistant Director (subject to qualification). It is stated that by virtue of an arrangement between the MCD and the Directorate of Education, Government of NCT of Delhi, Assistant Teachers of MCD, with B.Ed degree or equivalent, are also promoted as TGT. It is further stated that generally, such a promotion is optional, but by creating fear in the minds of teachers that if they refused promotion as TGT, they would be disentitled to

the benefit of ACP scheme, MCD has been compelling Assistant Teachers to accept promotion as TGT even if they may not desire such promotion. The applicant was accordingly deputed to Government of NCT of Delhi as TGT Social Science. He joined Sarvodaya Vidyalaya, Karampura on 01.04.2013. After joining, the applicant vide letter dated 11.09.2013 requested for his repatriation to his parent department, i.e., South MCD, for personal and family reasons. The said request has been rejected vide the impugned memorandum dated 13.11.2013. The rejection order reads as under:

“Reference his application dated 9-9-2013 for repatriation to Asstt. Teacher in MCD to the Directorate of Education, Shri Vikas Bansal presently working as TGT (S. Science) in Govt. (Co-ed) Sarvodaya Vidyalaya, H.Block, Karampura, New Delhi is hereby informed that his application for repatriation has been considered by the competent authority and rejected.”

3. The issue is no more *res integra* and is squarely covered by a Full Bench judgment of this Tribunal dated 15.07.2016 passed in OA No.2168/2011 and connected matters. Considering the claim of the promotee TGTs for repatriation to the MCD, the Full Bench made following observations:

“20. In the original recruitment rules period of probation is prescribed. However, in the amendment carried out in 1997 no period of probation is prescribed for promotion and thus the argument of the applicants that till they are confirmed on completion of two years

period of probation they continued to have lien on the post of Asstt Teacher, falls on the ground. Assuming for the sake of argument that there is a period of probation of two years as per the original recruitment rules, admittedly two years period is over. The applicants are continuing to hold the post of TGT. Under such circumstances they are deemed to have been confirmed unless by any order they are either repatriated or terminated. The legal position in this regard is debated by the learned counsel for the parties.

21. There is another reason that the applicants cannot be permitted to argue that they were on probation and have a right of repatriation. The applicants applied for their promotion to the post of TGT without any reservation for repatriation. They were not on deputation for a fixed period so as to empower them to seek repatriation on expiry of deputation. Their appointment was also not dependent upon their will and choice to continue on the promotional post. If they are un-willing to serve on the promotional post, they were/are at liberty to resign or seek voluntary retirement if permissible under rules, but in no case they can ask for their repatriation/reversion to the lower post. Such a situation is not envisaged by any rule. The contention of the applicants to repatriate them to the lower post is not sustainable in law."

4. Applying the principle laid down in the aforesaid Full Bench judgment, this OA deserves dismissal. We order accordingly.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/as/