

**Central Administrative Tribunal
Principal Bench**

OA No.3328/2009

New Delhi, this the 31st day of May, 2016

**Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri Sudhir Kumar, Member (A)**

B. S. Solanki S/o Raghubir Singh,
R/o RZ-869, Gali No.5,
Main Sagar Pur,
New Delhi-110046.

... Applicant

(By Advocate : Shri Rajiv R. Mishra)

Versus

1. Chief Secretary,
Government of NCT of Delhi,
I.P.Estate, Delhi Sachivalaya,
New Delhi.
2. Director of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi-110054.
3. Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

... Respondents

(By Advocate: Shri Vijay Kumar Pandita)

O R D E R

Justice Permod Kohli, Chairman:

This OA has been filed by the applicant seeking following reliefs:

- “(a) Direct the respondents to convene a DPC/Review DPC for considering the applicant for promotion to the post of Principal on notional basis prior to the promotion of Sh. Baldev Raj, junior of the applicant, i.e. w.e.f. 2001 which is the date Sh. Baldev Raj has been promoted as Principal.
- (b) Direct the respondents to count the past service of the applicant rendered in Government Aided school for fixation of seniority and other benefits.
- (c) Direct the respondents to grant all consequential benefits, pursuant to his promotion to the post of Principal, such as payment of arrears etc.
- (d) Direct the respondents to re-fix the pension of the applicant, consequent to his notional promotion to the post of Vice Principal and Principal.
- (e) Any other order or direction, as may deem fit in the facts and circumstances of the case may also be passed in the O.A.”

The above reliefs are sought in the backdrop of the facts noted hereinafter.

2. The applicant joined the Government of NCT of Delhi, Department of Education as a Post Graduate Teacher (PGT) in 1980. He was promoted to the post of Vice Principal with effect from September, 1999. He was assigned additional duties of Principal of Delhi Cantt. No.1 and D Block, Janakpuri No.1 School. He discharged the duties of Vice Principal/Principal w.e.f. August, 2000 to February, 2001 and June, 2001 to August, 2001, and as Vice Principal/Head of School w.e.f. September, 1999 till the date of his superannuation. The applicant retired on 31.12.2004. Vide Annexure

A-2, eligibility list of Vice Principals for promotion to the post of Principal was notified. The applicant's name figured at serial number 15 of the said list with seniority number 1448. The authorities summoned Annual Confidential Reports (ACRs) for the year 2003-04. ACRs of the applicant were forwarded by the office of Deputy Director of Education, District South-West (A), Vasant Vihar to the Office Superintendent, Secretariat Education Branch, Delhi vide letter dated 02.08.2004 (Annexure A-3). The Education Officer, Zone 20, District South-V, Vasant Vihar also forwarded the integrity certificate in respect of the applicant vide communication dated 20.10.2004 (Annexure A-4). The applicant was required to be considered for promotion to the post of Principal during the years 2003-04 and 2004-05. It is submitted that the applicant was not promoted as Principal allegedly on account of non-availability of the vacancies of Principal, which fact was not correct. The applicant was, however, considered for promotion by the DPC after his retirement, and ordered to be promoted vide the impugned order dated 22.10.2008. The name of the applicant figured at serial number 222 of the list of retired Government servants promoted on notional basis for the respective vacancy years. His notional promotion was against the vacancy year 2003-04.

3. On the basis of an RTI enquiry seeking information as regards the vacant posts of Principals in the Directorate of Education in June, 2004, the applicant was informed vide letter dated 02.04.2006 (Annexure A-9) that the vacant positions of Principal (male and female) up to 31.03.2005 under promotion quota was 184 posts. Based upon the aforesaid information, it is stated that the applicant was required to be considered for regular promotion during the period he was in service, but he has been denied such promotion as Principal for non-consideration of his case by the DPC, on account of non-convening of the DPC. The applicant also sought information from the UPSC regarding the number of vacancies of Principals for the year 2003-04 and 2004-05, vide his letter dated 12.07.2006. In response to his application, the UPSC vide reply dated 19.07.2006 informed the applicant that a proposal for convening meeting of the DPC for promotion to the post of Principal against 137 posts (83 male and 54 female) under the departmental promotion quota for the vacancy year 2003-04 was received in the Commission's office on 16.07.2004 from the Government of NCT of Delhi, and that the proposal remained under correspondence and the Government of NCT of Delhi vide their letter dated 05.08.2005 withdrew all the ACRs of the officers in the zone of consideration for preparation of gradation list. Subsequently, the proposal of the Government of NCT

of Delhi was treated as withdrawn by the Commission vide its letter dated 12.12.2005, as no information/documents/CRs were received from the Government of NCT of Delhi. He was further informed by the UPSC that a proposal for holding review DPCs for the vacancy years 2000-01, 2001-02 and 2002-03 on account of change in the seniority list of Vice Principals (male and female), consequent upon implementation of CAT's judgment in OA No.2540/2000 and fresh DPCs for the post of Principal (male and female) for 281 vacancies (176 male and 105 female) for the vacancy years 2003-04 to 2006-07 had been received in the Commission's office on 08.05.2006, and these proposals were under examination in the Commission's office. The applicant made representation (Annexure A-13) for convening of DPC for promotion to the post of Principal and for consideration of the applicant.

4. It is also contended by the applicant that he was working as PGT (Commerce) in S.D. Higher Secondary School (Government aided), Delhi Cantt. w.e.f. 22.08.1969, and one Shri Baldev Raj, also a PGT (Commerce), was working in St. Anthony School (Government aided) Paharganj w.e.f. 21.07.1972. The applicant and the said Baldev Raj both were absorbed in Government school under the Directorate of Education vide letter dated 22.12.1979 at serial numbers 38 and 41 of the said letter. Another PGT (Hindi) Salek Chand who was

working in S.D. Higher Secondary School (Government aided) w.e.f. 17.12.1974 was also absorbed in Government school in July, 1990 and promoted as Vice Principal w.e.f. 05.08.1999. Baldev Raj retired as Principal from GBSSS, Hari Nagar Clock Tower, New Delhi in January, 2005, whereas the applicant retired as Vice Principal from GBSS No.2, Block-D Janakpuri, New Delhi in December, 2004. The applicant's further case is that while fixing the seniority, Baldev Raj and Salek Chand were given promotion as Vice Principal from earlier dates, whereas the applicant was given seniority from later date. The applicant has placed on record service books of Baldev Raj and Salek Chand, and has also referred to the order dated 22.12.1979. Averments in this regard are made in para 4.21 showing the following comparative position of the applicant, Baldev Raj and Salek Chand:

Name	Date of initial appointment initially joined	Date of promotion as PGT	Date of absorption	Date of promotion as V. Principal	Date of promotion	Seniority fixed
1. B.S. Solanki	21.08.1968	22.08.1969	22.12.1979 at S.No.38	Sep 1999	As Principal not fixed	31.03.1980
2. Baldev Raj	22.08.1970	21.07.1972	22.12.1979 at S.No.41	April 1997	Promoted 2003	21.07.1972
3. Salek Chand		17.12.1974	July 1990	Aug 1999	Retired	17.12.1974

5. From the above, it appears that the applicant was promoted as PGT in Government aided school on 22.08.1969,

whereas Baldev Raj was so promoted on 21.07.1972, and Salek Chand on 17.12.1974 in Government aided school. The applicant and Baldev Raj were absorbed in Government service vide same order dated 22.12.1979 and figured at serial numbers 38 and 41 respectively, whereas Salek Chand was absorbed in July, 1990. However, it appears that Baldev Raj was promoted as Vice Principal in April, 1997, whereas Salek Chand was promoted as Vice Principal in August, 1999, and the applicant in September, 1999. The applicant was given seniority w.e.f. 31.03.1980, Baldev Raj w.e.f. 21.07.1972 and Salek Chand from 17.12.1974. It seems that except the applicant, the other two PGTs were given seniority from the dates they were promoted as PGT in Government aided schools. Baldev Raj was promoted as Principal in 2003 on regular basis, whereas the applicant came to be promoted only after his retirement on notional basis. The grievance of the applicant is that the seniority of the applicant, Baldev Raj and Salek Chand has been wrongly fixed. The applicant filed an OA No.1941/2007 before this Tribunal. During the pendency of this OA, the respondents produced copy of an order dated 11.11.2008 indicating that the applicant had been recommended for promotion to the post of Principal on notional basis for the vacancy year 2003-04. The aforesaid order was accompanied with DPC recommendation dated 22.10.2008 (impugned herein). In view of the

aforesaid order having been produced during the pendency of the OA, it was disposed of, relief having been granted to the applicant.

6. The applicant has filed the present OA on the ground that earlier it was revealed that Baldev Raj who was junior to him was promoted with effect from 2003 as Principal. However, subsequently, it was revealed that Baldev Raj was in fact promoted as Principal with effect from 2001, and thus this OA. This OA, however, came to be dismissed vide judgment dated 31.01.2011 holding that the applicant having failed to claim the relief in earlier OA No.1941/2007, the second OA would be barred applying the principles of Order II Rule 2 and Section 11 read with Order XXIII Rule 4(a) and (b) of the Code of Civil Procedure. Aggrieved of the dismissal of the OA, the applicant filed WP(C) No.8835/2011 before the Hon'ble High Court of Delhi. The writ petition was allowed by the Hon'ble High Court with the following observations:

“5. In our view, after considering the arguments advanced by the counsel for the parties, the impugned order cannot stand. This is so because the petitioner is not asking for a ‘magnified’ relief. The relief sought is the same. The petitioner claims promotion as Principal on notional basis w.e.f. the date his alleged junior Baldev Raj was promoted as Principal. It so happened that on the earlier occasion the understanding was that he (Baldev Raj) had been promoted w.e.f. 2003 but, in fact, it is now an admitted position that he was promoted w.e.f. 2001. The petitioner is only claiming correction of a mistaken impression and that is something which the Tribunal can certainly look into.

6. Of course, before the petitioner can be granted that relief, it would have to be ascertained as to whether he was, in fact, senior to Mr. Baldev Raj or not. This aspect of the matter needs to be determined by the Tribunal. As a result, we set aside the impugned order and remit the matter to the Tribunal for consideration on the issue whether the petitioner is entitled to be given notional promotion w.e.f. 2001. This will also depend to a large measure on the question as to whether the petitioner was senior to Mr. Baldev Raj or not.”

Order of the Tribunal dated 03.01.2011 has been set aside.

7. We have heard the learned counsel for the parties at length.

8. The Hon’ble High Court has set aside the order of the Tribunal holding that the second OA is maintainable as Baldev Raj, the alleged junior to the applicant, was promoted earlier and the applicant is seeking promotion from the date his junior was promoted. It was further observed that earlier it was the understanding that Baldev Raj had been promoted w.e.f. 2003, but it is now admitted position that he was promoted w.e.f. 2001, and that the petitioner is claiming correction of a mistaken impression, which can be looked into by the Tribunal. The Hon’ble High Court further observed that before the petitioner could be granted any relief, it would have to be ascertained as to whether he was in fact senior to Baldev Raj or not.

9. It is thus not disputed that Baldev Raj was promoted as Principal w.e.f. 2001. He was allotted seniority w.e.f. 21.07.1972 as PGT and the applicant was allotted seniority w.e.f. 31.03.1980. By virtue of the aforesaid seniority position, Baldev Raj became senior to the applicant, and on that basis he was promoted as Vice Principal and then Principal w.e.f. 2001. In order to determine the seniority of the applicant *qua* Baldev Raj, it is necessary to examine the validity of the *inter se* seniority of the two. We find that the applicant has never disputed the *inter se* seniority between him and Baldev Raj. Seniority was fixed long back, may be decades earlier. *Inter se* seniority being not in dispute, no relief can be granted to the applicant with effect from the date Baldev Raj was promoted, as admittedly Baldev Raj had higher seniority than the applicant. Relief (a) is thus not sustainable.

10. Insofar as relief (b) is concerned, again, the same emanates from the *inter se* seniority, and we are unable to disturb the long settled seniority, or to grant any benefit to the applicant by counting his past service rendered in Government aided school. No rule or law has been brought to our notice whereunder the applicant, or for that matter, any teacher absorbed in Government service, can claim past service.

11. As regards relief (c), the promotion of the applicant after his retirement being on notional basis, we cannot grant him any benefit of arrears. However, the applicant is entitled to re-fixation of his salary with effect from the date he was granted notional benefit, and consequently re-fixation of pension.

12. This OA is accordingly partially allowed. The respondents are directed to re-fix the pay of the applicant on notional basis with effect from the date he was promoted as Principal vide the impugned order dated 22.10.2008, and re-fix his pension accordingly. On re-fixation of pension, he shall also be paid arrears of pension within a period of three months. There shall, however, be no order as to costs.

(Sudhir Kumar)
Member (A)

(Justice Permod Kohli)
Chairman

/as/