

**Central Administrative Tribunal
Principal Bench**

OA No.3146/2015

New Delhi, this the 30th day of April, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

A. K. Choudhary (Lecturer)
S/o Sh. R. D. Choudhary
aged 51 years,
R/o 279, Block-D, Pocket A,
Shalimar Bagh,
Delhi-88

Presently Posted as :
Officiating Principal
Guru Nanak Institute of Technology,
Rohini, Delhi. Applicant.

(By Advocate :Shri Sourabh Ahuja)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Sachivalaya
Players Building,
New Delhi.
2. Secretary/Principal Secretary
(Technical Education)
Department of Training & Technical Education,
GNCT of Delhi
Muni Maya Ram Marg, Pitam Pura,
Delhi 110 088.
3. Union Public Service Commission
Through its Secretary
Shahjahan Road,
New Delhi. ... Respondents.

(By Advocate : Shri Anuj Kumar Sharma)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman:**

The applicant joined the service of Directorate of Technical Education, Delhi Administration, as Lecturer (Civil Engineer) in the year 1990. Ever since his appointment, he was posted in Polytechnic. He was granted Senior Time Scale w.e.f. 01.01.1996, and Selection Grade w.e.f. 01.01.2001. The applicant was also promoted to the post of Head of Department on being selected and recommended by the UPSC. Promotion from that post is to the post of Principal (Boys Polytechnic).

2. According to the Recruitment Rules of the year 1969, appointment to the post of Principal is by way of promotion or by direct recruitment, and the method is to be determined in consultation with the UPSC. Deputy Directors (Technical Education) with two years service, Assistant Directors (Technical Education), Head of Department (Polytechnic) and Principal (Women Polytechnic) with five years of service in the respective grades are made eligible. The technical qualifications are stipulated as at least 2nd Class Degree in Engineering of a recognized University.

3. The applicant contends that he became eligible to be promoted to the post of Principal, and though there existed

adequate number of vacancies, the respondents did not consider his case. On a representation submitted by him on 29.06.2015, the respondents informed him through letter dated 16.07.2015 that the process of amendment in Recruitment Rules for the post of Principal as per All India Council of Technical Education (AICTE) guidelines is underway, and the filling up the post of Principal would be taken up as and when the Recruitment Rules are amended.

4. This OA is filed challenging the communication dated 16.07.2015, and seeking a direction to the respondents to prepare a year wise panel for the post of Principal from the year 2010 onwards, and to convene a DPC for preparation of the panel, and to consider the case of the applicant in accordance with the rules that were in force at the relevant point of time. It is also prayed that the salary attached to the post of Principal be extended to him w.e.f. 01.01.2010.

5. The applicant contends that once the vacancies existed and rules were in force, the respondents were not justified in not convening the DPC. It is also stated that the mere fact that the process for amendment of the rules is in progress, cannot be a ground to deny the rights that have accrued to him, to be considered for promotion in accordance with the existing rules.

6. The respondents filed a counter affidavit. The service particulars furnished by the applicant are not disputed. It is stated that in view of the fact that amendment, as suggested by the AICTE was in progress, promotions could not be made. According to them, the effort was only to ensure that the appointments and promotions are made in accordance with the recommendations of the AICTE.

7. We heard Shri Sourabh Ahuja, learned counsel for the applicant and Shri Anuj Kumar Sharma, learned counsel for the respondents.

8. By the time the OA was filed, Recruitment Rules of 1969 were in force. Though the applicant stated that he acquired the eligibility to be promoted in the year 2010, the fact remains that he completed five years of service in the post of Head of Department, the feeder category, only on 20.03.2013. The representation made by the applicant was responded through a letter dated 16.07.2015. It reads as under:-

“To

The Principal
Guru Nanak Dev Polytechnic
GNCT of Delhi
Sec.15, Rohini, Delhi.

Sub :Regarding request for the post of Principal.

Sir,

Please refer to your application Dt.29th June, 2015 on the above cited subject. In this connection, it is informed that the process of Amendment in Recruitment Rules for the post of Principal as per AICTE guidelines is underway. As and when the RR's are amended the process of filling up these posts will be initiated for the eligible candidates.

(Shashank Gupta)
Dy. Director (E-I)"

From this, it is clear that except that the amendment to the Recruitment Rules was in progress, there was no bar to consider the case of the applicant.

9. It is always the prerogative of the Appointing Authority or the Government to make or amend the Rules. However, in the name of amending the Rules, they cannot refuse to consider the cases of those who already become eligible. Another aspect is that even when the Rules are amended, the vacancies that existed prior to the date of amendment need to be dealt with in accordance with the unamended Rules.

10. In ***Kulwant Singh and Others vs. Daya Ram and Others*** (2015) 3 SCC 177, the Hon'ble Supreme Court referred to various judgments on the subject, such as the one in ***Y. V. Rangaiah v. J. Sreenivasa Rao*** (1983) 3 SCC 284, and in para 39 observed as under:-

"39. In P. Ganeshwar Rao the Court reproduced a passage from Y. V. Rangaiah and observed that it appositely applied to the facts of the said case. The question that emerged for consideration in the said

case was whether the amendment made on 28.04.1980 to the Special Rules in the said case applied only to the vacancies that arose after the date on which the amendment came into force or whether it applied to the vacancies which had arisen before the said date also. Interpreting the Rule in the Court observed that the amendment on 28.04.1980 did not apply to the vacancies that had arisen prior to the date of amendment. The ratio of the said decision is that the vacancies that had arisen after the amendment would be governed by the amended Rule and the vacancies that had arisen prior to the amendment would be governed by the unamended Rules.

It was also mentioned that the judgment in **Y. V. Rangaiah (supra)** was affirmed in **State of Rajasthan vs. R. Dayal** (1997) 10 SCC 419 and **B. L. Gupta vs. MCD** (1998) 9 SCC 223.

11. Recently, a Full Bench of this Tribunal dealt with the very question in OA No.4320/2012 **B. S. Madhav Rao and Others vs. Union of India** decided on 30.04.2019, and it was held that the amended rules pertaining to promotions cannot be applied to the vacancies that existed prior to the amendment came into force.

12. It is brought to our notice that the Recruitment Rules for the post of Principal (Polytechnic) were amended in the year 2017. The case of the applicant needs to be considered for the post of Principal. If it becomes impermissible for the respondents to put him in the post of Principal as contained in the amended rules, he needs to be

considered for the post of Principal (Boys Polytechnic) with the attached scale of pay. Other similarly situated eligible candidates also need to be considered after giving them option.

13. We, therefore, allow the OA setting aside the impugned communication dated 16.07.2015. The respondents shall convene the DPC to consider the case of the applicant for the post of Principal in accordance with the unamended Rules of 1969. We make it clear that in the event of applicant being selected and appointed to the post, he shall be entitled to draw the scale of pay attached to that post, before the rules were amended. The respondents shall, however, be entitled to apply the amended rules for the post that have arisen subsequent to the date on which the amendment came into force. Exercise in this behalf shall be completed within a period of four months from the date of receipt of certified copy of this order.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/