

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

T.A. No.02/2015

Wednesday, this the 8<sup>th</sup> day of May 2019

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

Sh. Rajender Swaroop Sharma  
Age 72 years  
s/o late Sh. A S Sharma  
r/o H.No.I/1 (396), Gali No.2 Chander Lok  
Mandoli Road, Shahdara, Delhi – 110 093

..Applicant/Plaintiff

(Mr. A K Bhakta, Advocate)

Versus

1. Municipal Corporation of Delhi  
Through its Commissioner,  
Town Hall, Chandani Chowk, Delhi
2. Sh. Deewan Singh  
School Inspector (Physical), MCD  
Nazafgarh Zone, Near Water Tank  
Sai Baba Mandir, Nazafgarh,  
Delhi – 110 041
3. Sh. Pratap Singh,  
Physical Education Teacher/Principal, MCD  
M C Primary School, Metro Vihar  
Pocket C, Narela, Delhi – 40
4. Sh. Satpal Mann,  
School Inspector (Physical) MCD  
Office of the Dey. Education Officer  
Rohini Zone, Near Rajiv Gandhi Cancer Hospital  
Sector 5, Rohini, Delhi – 85
5. Sh. Rajender Pal Kathri,  
School Inspector (Physical) MCD  
Office of the Dy. Education Officer  
Narela Zone, Opp. P S Narela  
Delhi – 110 040
6. Sh. Rajender Singh,  
Physical Education Teacher /Principal (MCD)

M C Primary School, GG-3, Vikas Puri  
New Delhi – 110 027

7. Sh. Yudhvir Singh,  
Physical Education Teacher/Principal (MCD)  
M C Primary School, Kotla Firoz Shah  
New Delhi – 110 002

8. Sh. Ved Prakash Bhardwaj,  
Assistant Education Officer (Physical)  
MCD Office of Deputy Education Officer  
Narela Zone, Opp. P S Narela  
Delhi – 110 040

..Respondents/Defendants  
(Mrs. Sangita Rai and Mr. Pradeep Singh Tomar,  
Advocate for defendant No.1 – *Nemo* for defendant Nos. 2 to 8)

### **O R D E R (O R A L)**

**Justice L. Narasimha Reddy:**

This case has a fairly long history. This T.A. relates to the proceedings in Suit No.246/2008 on the file of Court of Senior Civil Judge, Delhi. For the sake of convenience, the parties are referred to as arrayed in the Suit.

2. The plaintiff was appointed as a Physical Education Teacher (PET) in the then MCD on 02.08.1974. He filed the Suit stating that in the seniority list prepared in the year 1990, he figured at Sl. No.3, whereas defendant Nos. 2 to 8 figured at Sl. Nos. 12, 14, 16, 17, 20 & 22, and despite that, the first defendant has promoted the defendant Nos. 2 to 8 to higher posts, in preference to him. He claimed the relief in the form of a declaration to the effect that he is senior to defendant Nos. 2 to 8 and for mandatory injunction against the first defendant to

give him the benefit of seniority, promotion and higher grade, in preference to defendant Nos. 2 to 8.

3. The first defendant filed a written statement opposing the Suit. It admitted that the plaintiff was appointed as PET on 02.08.1974. It was, however, stated that he was not appointed earlier to defendant Nos. 2 to 8 but, in fact, was appointed along with them. The first defendant further stated that though in the tentative seniority list, prepared in the year 1990, the plaintiff was shown at Sl. No.3, in the final seniority list dated 03.03.1994, he figured at Sl. No.20, below defendant Nos. 2 to 8.

4. The Trial Court framed issues and passed a decree in favour of plaintiff on 04.02.2010. Aggrieved by that, the first defendant filed RCA No.21/10 before the Court of District Judge, Karkardooma Courts, Delhi. The appeal was dismissed on 06.12.2010. Thereupon, the first defendant filed Revision Petition No.50/2011 before the Hon'ble Delhi High Court under Section 115 of CPC. During pendency of the revision petition, the service matters of the employees of first defendant were brought under the purview of the Central Administrative Tribunal, through a Notification. Therefore, an order was passed on 11.12.2014 in the revision petition, directing the transmission of the entire record to this Tribunal.

5. In compliance with the order passed by the High Court, the entire record of the Appeal and Suit was transmitted to the Tribunal and accordingly, it is numbered as T.A. No.02/2015. The plaintiff in the suit is shown as the applicant, and the defendants as respondents in the T.A. (In fact, the array of the parties, as reflected in the revision petition, should have been repeated in the T.A.)

6. Learned counsel for plaintiff submits that he is senior to defendant Nos. 2 to 8 and there was absolutely no basis for the first defendant in ignoring his seniority while effecting promotions to a higher post or in extending the financial benefits.

7. We heard Mr. A K Bhakta, learned counsel for plaintiff and Mrs. Sangita Rai, learned counsel for defendant No.1. There is no representation on behalf of defendant Nos. 2 to 8. They were set *ex parte* by the Trial Court.

8. The suit was filed for the relief in the form of declaration and mandatory injunction. It was in relation to the promotion of the plaintiff to the higher post. Though the plaintiff pleaded that he was appointed earlier in point of time than defendant Nos. 2 to 8, the plea of the first defendant was that the plaintiff and defendant Nos. 2 to 8 were appointed on 02.08.1974. The suit was contested by the first defendant alone and others were set *ex parte*.

9. On the basis of the pleadings before it, the Trial Court framed the following issues for consideration:

- “1. Whether the plaintiff has come to this court with clean hands or has suppressed the material facts? (OPD)
2. Whether the suit of the plaintiff is barred by limitation? (Onus on both parties)
3. Whether the plaintiff is entitled to decree of declaration as prayed for? (OPP)
4. Whether the plaintiff is entitled to decree of mandatory injunction as prayed for? (OPP)
5. Relief.”

10. Oral and documentary evidence were adduced, and the Trial Court decreed the suit through order dated 04.02.2010. Aggrieved by that, the first defendant preferred RCA No.21/2010 before the Additional District Judge 02, North East, Karkardooma Courts, Delhi. The appeal was dismissed on 06.12.2010. It appears that on account of the value of the suit, a civil revision, instead of second appeal, was filed before the Hon'ble Delhi High Court and the entire case was transferred before this Tribunal, in view of the Notification issued bringing the service of the employees of the first defendant within its purview.

11. The point that arises for consideration in this T.A. is as to whether – (a) the plaintiff is entitled to be declared as senior to defendant Nos. 2 to 8; and (b) whether he is entitled to be

promoted to the higher post in preference to defendant Nos. 2 to 8.

12. The sole basis for the claim of the plaintiff was the tentative seniority list for the post of PET issued in the year 1990. He figured at Sl. No.3 in that list, whereas defendant Nos. 2 to 8 figured from Sl. No.12 onwards. If this were to have been the final seniority list, the claim of the plaintiff certainly deserves to be accepted. However, in its written statement, the first defendant categorically stated that the final seniority list was published on 03.03.1994 and in that list, the plaintiff figured at Sl. No.20, far below the defendant Nos. 2 to 8.

Relevant portion of the written statement reads as under:-

“3..... However, it is submitted that the plaintiff was appointed along with defendants No.2 to 8 on 2-8-1974, and he was on Sl. No.22 in the seniority list behind the defendants No.2 to 8 and as such he is not senior to the other defendants. It is further submitted that a tentative list was prepared in the year 1990 on which the plaintiff is relying upon which was not finalised by the department and subsequently, a final list was prepared dated 3/3/94, as per the seniority. The list is enclosed the kind perusal of the Hon'ble Court. It is further submitted that as per the final outcome of the seniority list the plaintiff is at Sl.No.20 and behind other defendants.”

13. Though the plaintiff filed replication, he did not deny the factum of there being a final seniority list, published on 03.03.1994. It is necessary to mention that though the first defendant did not lead the oral evidence, it made the final seniority list as part of record as Ex. PW/X2. The plaintiff

figured at Sl.No.20, and his date of appointment was shown as 02.08.1974. The Trial Court and the lower appellate court, however, did not take this aspect into consideration. The relief granted to the plaintiff, is not supported by record.

14. Once it emerges that the plaintiff was shown as junior to defendant Nos. 2 to 8 in the seniority list published on 03.03.1994, and he did not care to challenge that seniority list, there was no way that the relief could have been granted to him.

15. Therefore, the T.A., which now is in the form of revision under Section 115 CPC, read with Section 29 of the Administrative Tribunals Act, 1985, is allowed and the decree passed by the Trial Court in Suit No.246/2008 on the file of Senior Civil Judge, Delhi, as affirmed by the Court of Additional District Judge 02, North East, Delhi in RCA No.21/2010, are set aside.

16. All the pending M.As. shall stand disposed of.

There shall be no order as to costs.

**( Aradhana Johri )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**May 8, 2019**  
/sunil/