

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1020/2003

NEW DELHI THIS.../5... DAY OF MARCH 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Smt. Vidya Wati,
Principal,
G.G.S.S.S., Laxmi Bai Nagar,
New Delhi - 110 023

r/o D-I/46, Lodhi Colony,
New Delhi - 110 003

.....Applicant

(By shri M.P. Raju, Advocate)

VERSUS

1. Govt. of N C T of Delhi
through Secretary Education,
Department of Education,
Old Secretariate,
Delhi
2. Director of Education
Old Secretariate,
Delhi

.....Respondents

(By Shri Mohit Madan proxy for Mrs. Avnish Ahlawat,
Advocate)

O R D E R

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was appointed on 12.10.70, as Trained Graduate Teacher (TGT) and improved her qualification in 1975, by obtaining M.A. in Hindi, thereby becoming eligible for promotion as PGT. However, it is the contention of the applicant that respondents promoted a general category candidate Smt. Pushpa Sood on 17.1.76 as PGT overlooking the claim of the applicant who is a SC Candidate.

[Signature]

- 2 -

2. The applicant was promoted on 25.1.83 as PGT and thereafter regularised in this grade on 28.8.82. The applicant claims that Smt. Susheela Kaul, who is junior to her, was given promotion as PGT with effect from 21.11.79. The applicant filed OA No. 1930/1999 seeking promotion and seniority to the grade of PGT w.e.f. 1975 or at least before 21.11.1979 i.e. the date from which her junior Smt. Shusheela Kaul was promoted with consequential benefits. The OA was disposed of with following orders:

"Therefore, in the facts and circumstances of the case, we consider it appropriate to dispose of this OA with the following directions:

- i) The respondents shall consider the applicant for promotion to the post of PGT, subject to her fulfilment of the eligibility and other conditions as per the relevant rules and instructions. In the circumstances, they shall not insist on the fact that she had not made any separate application in the proforma, as per the executive instructions/circulars issued from time to time as her particulars were available with the respondents in her service book from 1975.
- ii) If she is so found fit for promotion to the post of PGT from an earlier date to 25.1.1983, taking into account the facts and circumstances of the case, she will be entitled to only notional benefits of promotion like seniority from the date any of her junior was promoted, without any monetary benefits."

3. In compliance with the directions of the Tribunal the respondents issued a corrigendum dated 10.10.2002 revising the seniority of the applicant and placed her at srl No. 60(a) above Shusheela Kaul who also belongs to the Scheduled Caste category. Her date of appointment as TGT was fixed as 12.10.70 and given notional seniority as PGT w.e.f. 20.10.79.



16

-3-

4. The applicant has filed the present OA seeking relief on the grounds that respondents had not fully complied with the orders passed by the Tribunal on 11.9.2001 in OA 1930/1999 as they have only granted the notional seniority as TGT w.e.f. 20.10.79 without first considering promotion of the applicant to the post of PGT against SC category 40 point roster. And further promotions to the post of Vice Principal and then to the post of Principal as per Rules and Reservation for SC/ST candidates.

5. It is the case of the applicant that she became eligible available for promotion to PGT w.e.f. 1975 on passing the MA (Hindi) examination, she should have been promoted when her juniors were promoted. The respondents were duty bound to consider the applicant against vacancies reserved, as per the roster point register for SC/ST persons by forming a separate eligibility list and a separate zone of consideration. However, the respondents have not observed this rule and have been promoting juniors to applicant in both general and SC/ST categories. On 21.11.79 one Smt. Shusheela Kaul junior to the applicant and one SC candidate Smt. Usha Lata Malviya were promoted in the direct recruitment quota and appointed as PGT w.e.f. 28.2.77. The applicant therefore has a claim to be considered senior to all the directly recruited candidates in the seniority list of Lecturers recruited during the year 1976-77. Therefore the respondents have failed to grant notional benefits including promotion as PGT w.e.f. August 75 or at least from 17.1.76 or 28.2.77. Even if the seniority is given w.e.f. 20.10.79 the applicant is entitled for consequential benefits i.e. PGT Selection Grade with effect from 20.10.80, and PGT Selection from

-4-

20.10.92 and Vice Principal from 15.7.96. All these benefits have been granted to her juniors who were promoted even after 1979.

6. It is the case of the applicant that she should have been considered for promotion to PGT against the vacancy reserved for SC/ST candidate by not clubbing her along with general category candidate but through a separate zone of consideration and eligibility. This is in line with the Hon'ble Supreme Court Judgement dated 7.9.2000 in the case of B.D. Anil & Others Vs Union of India & Others and also the same principle has been reiterated in the case of list in the case of Krishna Kumar Vs Union of India in OA No. 2730/93. The applicant claims that there were sufficient posts and vacancies from the year 1975 onwards upto the year 1997 when the applicant could have been considered for promotion to PGT Hindi. Similarly the vacancies against SC/ST category were available for promotion to the post of Vice Principal and then to Principal. To support this claim the applicant placed on record Annexure - IX showing the vacancy position. Respondents by assigning the notional seniority of PGT from 20.10.79 without first considering notional promotion have violated the clear orders of the Tribunal.

7. Counsel for the applicant during oral submissions reiterated the claims made in the O.A.

8. The respondents in their written submissions have made some preliminary objections that the question of promotion to PGT w.e.f. 1975 and to the post of Vice Principal in the year 1980 and Principal thereafter from 1985 are barred by limitation and res-judicata. Further ,

8

-5-

that the grievances were pertaining to the period which is more than 3 years before date on which jurisdiction of the Tribunal became exercisable and as such the Tribunal under section 21 of the AT Act, 1985 had no jurisdiction to entertain the present objection.

9. The applicant in their rejoinder to counter filed by the respondents contested these preliminary objections that the cause of action for all the reliefs had arisen initially, from 1975 onwards & had specifically and indisputedly arose with the judgement of this Hon'ble Tribunal dated 11.9.2001, And finally arose by the order of the respondents dated 10.10.2002 when they partially complied with the judgement and order of this Hon'ble Tribunal and refused to grant the applicant all the benefits flowing out of the said judgement . Hence preliminary objections have no force.

10. The present OA is outcome of the order dated 10.10.2002 which is in compliance of the Tribunal's judgement of 11.9.2001 and as such we cannot agree with the preliminary objections raised by the respondents that the OA is hit by limitation , jurisdiction and res-judicata.

11. The plea of the respondents is that they have fully complied with the directions of the Tribunal dated 11.9.2001 and the same has not been impugned in this OA. They have regularised the applicant as PGT w.e.f. 20.10.79 and assigned revised seniority at sl No. 60(a) . The applicant has been accorded notional seniority w.e.f. 20.10.79. The applicant has been placed above to her junior Smt. Shusheela Kaul and applicant has failed to show any junior to her i.e. departmental promotional quota who have

a

- 6 -

been promoted before the applicant from the date she became eligible and as such there is no basis for her claimed reliefs.

12. We have heard the counsel for the parties . The matter has been considered in detail and also perused the documents brought on record. We find that in compliance of the directions given by the Tribunal in OA No. 1930/1999 , the applicant has been given notional seniority w.e.f. 20.10.79 as PGT. It is not contested that by obtaining MA in Hindi the applicant had become eligible for consideration for promotion as PGT. It is also agreed by the respondents that general category candidate and one SC candidate Smt. Usha Lata Malviya were promoted before 20.10.79 the date from which the applicant had been granted notional seniority. It is thus clear that vacancies were available but the applicant was not considered against these vacancies. The Apex Court in the case of B D Anil Vs Union of India (supra) has held that SC/ST candidates should not be clubbed with general category candidate but should be considered for promotion by placing them in separate zone of promotion and eligibility. The applicant being a SC candidate, therefore, should be considered in a separate seniority/ eligibility group and given ~~notional~~ proforma promotion against 40 point roster quota, before fixing of the seniority, if otherwise found fit for promotion and eligible, as per eligibility conditions.

13. In view of the above we would like to dispose of this OA with the directions that in compliance to the Tribunal's order dated 10.9.2001 in OA 1930/1999, the respondents should first consider the applicant for promotion to the post of PGT from a date earlier to 25.1.83

-7-

20

by following the 40 point roster as per rules and as per the eligibility and after that to fix notional seniority, After considering her promotion and re-fixing the notional seniority in PGT grade all consequential promotional benefits to be granted with regard to the date of selection as PGT, SG- I & II, PGT Scale, promotion as Vice Principal, If she is found fit as per rules and law. She will be only entitled for notional benefits like seniority and promotion from the date any of the juniors have been promoted without any monetary benefits. This process should be complied with within six months from the date of receipt of the certified copy of this order.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/