

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO.2181/2003

New Delhi, this the 20th day of December, 2004

**HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. SARWESHWAR JHA, MEMBER (A)**

Shri Raj Singh Yadav,
S/o Late Shri Bhai Ram
R/o H.No.201, Gali No.4, Hari Nagar,
Near New Anaz Mandi,
Gurgaon – 120 001

...

Applicant

(By Advocate: Shri D.R. Gupta)

Versus

1. Union of India, through
Secretary M/O Human Resource Development,
Department of Secondary Education &
Higher Education, Shastri Bhawan,
New Delhi
2. Commissioner, Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shaheed Jit Singh Marg,
New Delhi – 110 016

...

Respondents

(By Advocate: Shri S. Rajappa)

ORDER

BY HON'BLE MR. SARWESHWAR JHA :

This OA has been filed against the order of the respondents dated the 20th September, 2002 whereby the post of Hindi Officer and Hindi Translator have been abolished. It has been contended by the applicant that the respondents could not have abolished the said posts, as these posts are statutorily required. It has also been alleged that the same has been done arbitrarily and with malafide against the applicant so as to deprive him of the benefit of promotion to the post of Hindi Officer in terms of the recommendations of the DPC held in pursuance of the direction of the Tribunal while disposing of OA No.717/2001 on 18.11.2001. The applicant has argued that the said action of the respondents is not sustainable in law as held by the Hon'ble Apex Court (SCR 1974 (1) page 650).

[Signature]

2. The applicant was initially appointed as a Hindi Translator in K.V.S. on 21.2.1989 and was subsequently promoted as Senior Hindi Translator w.e.f 12.8.1994 on the basis of the recommendations of the DPC. When the post of Hindi Officer fell vacant on retirement on superannuation of the incumbent of the post, namely, Dr. C.L. Kalra on 1.6.2000, the work looked after by the said incumbent was routed through him till such time another Hindi Officer joined. A request was made by the applicant for convening a DPC so that he could be considered for promotion to the said post, as he was the only eligible Senior Hindi Translator for such a promotion in terms of the Recruitment Rules obtaining at that time. While a direction was given by the Vice Chairman of the JCM meeting held on 29.8.2000 to consider all pending cases of promotions by convening the meeting of the DPC latest by the 31st October, 2000, the respondents did not show any response to his claim for promotion to the post of Hindi Officer. The applicant has also made a reference to his having been denied the scale of pay allowed to the Senior Hindi Translators working in other autonomous organizations/subordinate offices of the Government. He was, therefore, constrained in having filed an OA before this Tribunal. The said OA, namely, OA No.717/2001 was disposed of by the Tribunal on 8.11.2001 whereby directions were given to the KVS to hold a meeting of the DPC to consider the case of the applicant for promotion to the post of Hindi Officer in accordance with the Recruitment Rules issued vide Memo dated 6.7.1984. The Tribunal, however, directed that in case the applicant is found fit by the DPC, he shall be entitled to all consequential benefits in accordance with the relevant rules and instructions.

3. Surprisingly, the applicant was served with a charge memo dated 10.12.2001 after the said directions of the Tribunal had been given to the respondents. The DPC is reported to have been held on 28.11.2002 in which the recommendations of the DPC were kept in a sealed cover on the ground of pendency of disciplinary proceedings instituted against the applicant vide charge memo dated 10.12.2001. This led to the applicant again approaching the Tribunal vide OA No.614/2002. The applicant has referred to the order recorded by the Tribunal while issuing a notice to the respondents in which, among other things, the following observation was made:

"Respondents in order to overreach the aforesaid orders have proceeded to issue a charge memo (Annexure A-I) which pertains to an old incident of 1993-94, which incident, according to the applicant, has already been enquired into in the past and has been closed. Applicant, in the circumstances, by instituting the present OA seeks orders to quash the aforesaid charge memo."

4. While disposing of the said OA, the Tribunal directed the respondents as under:



“(a) The enquiry referred to above shall be completed within two months from the date of receipt of a copy of this order. Needless to emphasize that applicant will co-operate and no unnecessary adjournments will be taken;

(b) The petitioner would be at liberty to take all the legal and factual pleas available in law including inordinate delay in initiating the enquiry and other pleas that have been in the present petition; and

(c) Till such time the enquiry is not completed, promotion to the post of Hindi Officer shall not be effected.”

5. It has been submitted by the applicant that the enquiry was completed and the report thereon was submitted on 16.9.2002, in which no charge has been established against him. He has also mentioned that, in fact, there are some adverse remarks against the KVS for having formulated the charge memo on the basis of non-submission of alleged complaint to the Commissioner, K.V.S.

6. It has been alleged by the applicant that the post of Hindi Officer was abolished vide order dated 20.9.2002 with an ulterior motive to deprive him of the promotion to the post of Hindi Officer in terms of the recommendations of the DPC held in pursuance of the directions of the Tribunal under the garb of accepting the recommendations of the E.R.C., which, as reported, had recommended abolition of a number of posts including the post of Hindi Officer. It has been contended by the applicant that the post of Hindi Officer could not have been abolished, as it is a statutory post as provided for in the Official Language Act, 1963, Official Language Rules, 1976 and orders issued thereunder from time to time. It has been further alleged that the post of Hindi Officer as well as the post of Hindi Translator are required to fulfill the constitutional obligations of the Official Language Policy as laid down in the Constitution as well as in the said Act/Rules/Orders. A reference has also been made to the recommendations of the Sub-Committee of the Official Language Parliamentary Committee in its meeting on 12.9.2002 in which recommendations were made to fill up the post of Hindi Officer on priority basis in the KVS. The Ministry of Human Resource Development also wrote to the KVS on 28.5.2003 to send a proposal for revival of the post of Hindi Officer. It was made clear in the said letter that the posts are statutory posts and that there is no ban on creation of O.L. post. In this connection, the applicant has drawn attention to M.H.A (Dept. Of Official Language)’s O.M. No. 13035/3/95-OL(P&C) dated 22.7.2004. Accordingly, it has been contended by the applicant that the argument of the respondents (KVS) that the work relating to implementation of the official language policy is being carried out by the Education Officer is not tenable. The applicant has pointed out in paragraph 4.20 of his OA that inspite of the embargo on creation of posts and recruitment of staff in autonomous organizations, a post of Superintending Engineer was created to promote one Shri A.K.



Saxena, thereby showing a biased approach of the KVS against the applicant. He has also referred to an instance of a 'No Objection Certificate' for attending in an interview for the post of Hindi Officer in the All India Council for Technical Education on 19.5.2003 having not been issued to him, thereby depriving him of an opportunity for appointment as Hindi Officer in some other autonomous organisation to prove his point that the respondents were biased against him. References have been made to his earlier applications in this regard having not been forwarded by them. In any case, the present application is based on the premise that the post of Hindi Officer is a statutory post and could not have been abolished. The action of the respondents, therefore, in abolishing the said post, according to him, is totally unjustified. In this regard, the applicant has also drawn attention to the provisions relating to creation of posts for the work relating to official language, criteria for minimum number of posts, work standard, duties of officers and ratio of Hindi Typists/Stenographers, in which, among other things, it has been provided that for Attached/Subordinate Offices having hundred or more ministerial employees, one Hindi Officer (Assistant Director (O.L.)) shall be provided. It is thus observed that the number of post of Hindi Officer is based on the number of ministerial employees in an organisation and not on work measurement basis. Similar provisions exist for other categories of official language posts.

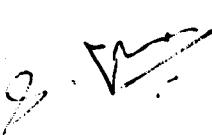
7. The respondents, in their reply, however, have referred to the recommendations of the Expenditure Reforms Commission in respect of autonomous organizations and in pursuance of which 26 posts were abolished. These also include the posts of Hindi Officer and Hindi Translator. They have not commented on the constitutional requirement in regard to Hindi Officers' posts. They have also denied any bias or malafide having been shown towards the applicant. On the question of the scale of pay of Rs.5500-9000 being allowed in the case of Senior Hindi Translator in the KVS, they have submitted that the matter had been referred to the Ministry of H.R.D. and their decision was awaited. Referring to the decisions of the Tribunal in OA No.614/2002, and also the earlier OA No.717/2001, the respondents have submitted that the directions of the Tribunal would show that there was no malafide or bias against the applicant. The meeting of the DPC, according to them, was held on 28.11.2002 in compliance with the directions of the Tribunal in OA No.717/2001 and the recommendations of the DPC were kept in a sealed cover in view of the disciplinary proceedings contemplated against him which was the subject matter of dispute in OA No.614/2002. They have defended their action to have created a post of Superintendenting of Engineer on the basis of the requirement in regard to construction of buildings for KVS as explained in their reply to paragraphs 4.19 and 4.20 of the OA. In regard to the allegation of the applicant that his applications for appointment to the post of Hindi Officer outside the KVS were not forwarded, the respondents have

S. M.

taken a view that necessary decisions in this regard were taken by the competent authority and that such matters cannot be agitated, as it is a matter of policy.

8. The applicant has taken us through the rejoinder that has been filed by him in which he has again focused on the constitutional aspect of the posts of Hindi Officer and Hindi Translator and the same being statutory in nature. He has also pointed out that the Official Language Policy is to be implemented by properly qualified personnel like Hindi Officer and others and not by other officers like Education Officer, etc. In support of his claim that the statutorily required posts cannot be abolished, the applicant has referred to the decisions of the Hon'ble Supreme Court in **U.T. - Chandigarh and Others vs. Avtar Singh and Others** (2002 (10) Supreme Court Cases 432) in which it has been held that though creation and abolition of the posts lies within the domain of the executive, but in view of the statutory requirement, creation of a post of Block Development and Panchayat Officer was must so that the incumbent could discharge his statutory duties. The applicant has, accordingly argued that, as per the Official Language Policy of the Union of India, it is necessary to have a post of Hindi Officer to perform its constitutional obligation and other statutory requirement and, therefore, the same could not have been abolished by the KVS, particularly after having given an assurance to the Parliamentary Committee to fill the post. It has also been argued by the applicant that, while recommendations for his promotion to the post of Hindi Officer had been kept in a sealed cover by the DPC, on his exoneration of the charges, there was no alternative before the respondents but to open the sealed cover and to promote him; to avoid such a situation, they abolished the post itself without caring to see that the post was a statutory one and could not have been abolished. A reference has also been made to what has been held by the Hon'ble Supreme Court that with-holding of promotion, stagnation in-service for unduly long period without avenue of promotion is not in the interest of administration.

9. On consideration of the rival contentions of the parties, it is thus observed that the applicant was the only person in the KVS eligible for promotion to the post of Hindi Officer. Even if it is accepted that the respondents have no malafide or bias against the applicant, it is difficult to accept the position that he could not have been promoted to the said post after the enquiry as instituted against him had been completed and he had been exonerated of the charges levelled against him and his case had already been considered by the DPC and the recommendations in his case had been kept in sealed cover. It remains a mystery whether the respondents had no alternative, but to abolish the post of Hindi Officer when there were instructions that the post of Hindi Officer and other posts were required for implementing the Official Language Policy as laid down in the Constitution and also in the Official Language Act, 1963 and Rules/Orders made/issued thereunder. It is also not seen in the written submissions as filed by the respondents whether they



6

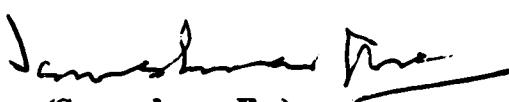
considered the question of not abolishing the post of Hindi Officer in the light of the statutory nature of the post of Hindi Officer and whether they made any reference in this regard to the authorities concerned while undertaking an exercise for abolishing various posts in pursuance of the recommendations of the Expenditure Reforms Commission. Their having shown inability in this regard without making any reference to efforts, if any, to see that the said post is not abolished, as it was the single post for the entire KVS in the country, is not at all convincing. Keeping in view the fact that one post of Hindi Officer is required for an organization having hundred or more ministerial employees, to argue that the said post was not required for a large organization like the KVS employing several hundreds of employees, is again quite baffling. It is also quite irrational to make a statement that forwarding of applications for appointment to posts of Hindi Officer outside the KVS in the case of the applicant cannot be agitated, as it is decided by the competent authorities. It is known to the KVS that the post of Hindi Officer is the only post in the organization to which Senior Hindi Translator could have looked forward to for an opening. In order to avoid stagnation and also keeping in view the observations of the Hon'ble Apex Court in the matter, as referred to hereinabove, it was necessary that the post was kept alive to provide promotion to the only claimant for the post in the Organisation. Model employers could not have closed their eyes to having a healthy career prospects for their employees. Again, coming to the question of scale of pay as already granted to Senior Hindi Translators in other Organizations of the Government and the same not being made available to the applicant for the reason that the matter has been referred to the Ministry of H.R.D. for a decision, it is difficult to understand the samewhen the said scale has already been adopted by all the Organizations of the Government; it is possible that the matter has not been pursued with the Ministry seriously. We thus find that there are sufficient indications in the facts of the case as to show that the applicant has not been dealt with by the respondents fairly. They have also not been alive to the constitutional/statutory requirements in regard to Official Language posts. In the absence of any fact showing the contrary, we are inclined to take a view that the respondents have been quite unjust and unfair in dealing with the subject.

10. Under these circumstances, we dispose of the OA with the following directions:-

- (i) The respondents shall re-consider abolition of the post of Hindi Officer in the KVS in the light of the constitutional/statutory requirements in this regard and shall take steps to revive the same in consultation with the competent authorities including the Ministry of Home Affairs (Department of Official Language);

- (ii) After the post has been revived, the respondents shall, according to the recommendations of the DPC, extend to the applicant the benefit of promotion to the post and will also grant him consequential benefits; and
- (iii) The respondents shall also extend the approved scale of pay for the post of Senior Hindi Translator to the said post in the KVS as held by the applicant from the appropriate date as already adopted in similar cases by other Organizations of the Government.

11. The above directions shall be complied with within six months from the date of receipt of a copy of this order. No costs.



(Sarweshwar Jha)
Member (A)



(Shanker Raju)
Member (J)

/pkr/