

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.10.2012

+ **W.P.(C) 8835/2011**

B.S.SOLANKI ... Petitioner

versus

THE CHIEF SECRETARY AND ANR ... Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Harvinder Oberoi

For the Respondent : Mr. Aditya Madan

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 3.1.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 3328/2009. The Tribunal has rejected the said OA filed by the petitioner on the simple ground that the petitioner has asked for the same relief twice and that cannot be permitted. In so far as the other question is concerned, as to whether the petitioner was senior to Mr. Baldev Raj and Mr. Salek Chand, though it was noticed by the Tribunal, it had not been gone into it as would be apparent from paragraph-3 of the impugned order which reads as under:-

“3. Before we may part with this order, we may mention that on an earlier occasion we had reserved judgment, but vide orders dated 30.11.2010 we posted the matter for re-hearing. The

reason for listing the matter was that while preparing the judgment, we found from the written statement filed on behalf of the respondents that Baldev Raj was assigned seniority number 95 and was regularized as PGT w.e.f. 21.7.1972, whereas the applicant was assigned seniority number 90D and regularized as PGT w.e.f. 31.3.1980. The pleadings as mentioned above required clarification as to whether Baldev Raj was junior to the applicant or not. We need not go into that question in view of our finding that the second OA for the same cause and for same relief, even though magnified, would not be competent.”

2. The learned counsel for the petitioner drew our attention to the earlier order of the Tribunal, the operative portion of which is extracted in the impugned order. The earlier order dated 19th November, 2011 in OA 1941/2007 reads as under:-

“Ms Rashmi Chopra, counsel for the respondents, at the very outset, has handed over to us a copy of the order dated 11.11.2008 addressed to her by Shri K.S. Meena, Dy. Secretary of Education (Secretarial Branch), which contains following information:-

1. I am to inform you that the name of Sh. B.S. Solanki has been for the promotion to the post of Principal on notional basis for the year 2003-04 vide notional basis for the year 2003-04 vide Order No. F.2 (15)/Sectt. Br./Regular/DPC/2008/1767-81 dated 22.10.2008. I am enclosing herewith a copy of promotion order for apprising the Hon’ble CAT in the matter.

2. The prayer of the applicant in this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, is for

considering him for notional promotion to the post of Principal w.e.f. July 2003.

3. In view of the instructions received by the learned counsel for the respondents vide letter dated 11.11.2008, mentioned above, the present application has become infructuous and is accordingly disposed of.”

3. The learned counsel for the petitioner submitted that in OA 1941/2007, the prayer was that the petitioner be promoted notionally w.e.f. 2003, the date on which Mr. Baldev Raj, who is allegedly junior to the petitioner was promoted as Principal. According to her, the said Mr. Baldev Raj was actually promoted as Principal w.e.f. 2001 and therefore, the benefit of notional promotion to the petitioner ought to have been given not from July, 2003 but from 2001, the date on which the said Mr. Baldev Raj was promoted as Principal. She submitted that the position was accepted on 19th November, 2008 when the order in the first OA was passed on the understanding that Mr. Baldev Raj had been had been promoted as Principal w.e.f. July, 2003. It now transpires that Mr. Baldev Raj had been promoted in 2001 and it is on that basis that the second OA, i.e., 3328/2009 was filed claiming notional promotion w.e.f. 2001.

4. The learned counsel for the respondent submitted that it has also not been established as to whether the petitioner was senior to Mr. Baldev Sigh at all. This is also apparent from the extract of paragraph-3 of the impugned order which we have already referred to above.

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.

7. The writ petition is allowed to the aforesaid extent.

8. The parties shall appear before the Tribunal in the first instance on 5th November, 2012.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

OCTOBER 03, 2012

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