

\$~1, 8 & 9.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7154/2018

GOVT. OF NCT OF DELHI AND ORS. Petitioner
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Palak Rohmetra
and Ms. Aarushi, Advocates
versus

RAJ KUMAR Respondent
Through

+ W.P.(C) 7107/2018

GOVT. OF NCT OF DELHI AND ORS. Petitioner
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Palak Rohmetra
and Ms. Aarushi, Advocates
versus

SUNIL KUMAR Respondent
Through

+ W.P.(C) 8191/2018

GOVT. OF NCT OF DELHI AND ANR Petitioner
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Ms. Palak Rohmetra
and Ms. Aarushi, Advocates
versus

SH. ROOP RAM MEENA ORS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

%

ORDER
01.11.2018

1. The GNCTD has preferred these writ petitions to assail the common order passed by the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No. 2194/2010 (preferred by the respondent Roop Ram Meena in W.P. (C.) No. 8191/2018); O.A. No. 1084/2011 (preferred by the respondent Sunil Kumar in W.P. (C.) No. 7154/2018), and; O.A. No. 4767/2010 (preferred by the respondent Raj Kumar in W.P. (C.) No.7107/2018). The tribunal has allowed the said O.As and passed the following directions:

“(i) The respondents to grant the benefit of seniority to the applicants from the dates of their initial ad hoc promotions, i.e., w.e.f. 08.12.1997 in case of applicant of OA No.2194/2010, w.e.f. 30.12.1997 in case of applicant of OA No.1084/2011 and w.e.f. 04.04.1997 in case of applicant of OA No.2767/2010.

(ii) The impugned tentative seniority list dated 04.12.2002, amended tentative seniority list dated 21.07.2009 and the final seniority list dated 05.03.2010 are hereby quashed to the extent the applicants have been allocated seniority from the date of their regular promotion to the post of PGT w.e.f.. 14.07.2000.

(iii) The respondents are directed to fix seniority of applicants in OA Nos.2194/2010, 1084/2011 & 2767/2010 from the dates of their initial ad hoc promotions, i.e., 08.12.1997, 30.12.1997 and 04.04.1997 respectively.

(iv) As a consequence of the changed position of their seniority, applicants shall be considered for their promotion to the post of Vice Principal taking into consideration their re-fixed seniority. Review DPC be held for this purpose within the period of two months.

5

(v) If found fit by Review DPC, the applicants shall be promoted to the post of Vice Principal. The applicants shall not be entitled to any arrears on the promotional post of Vice Principal from such retrospective promotions. However, their salary shall be fixed giving them the benefit of such retrospective promotions. The actual financial benefit of promotion would be from the date, promotions are made and the incumbents joined their promotional post. No order as to costs".

2. The respondents were initially appointed as Trained Graduate Teacher (TGT). They were granted ad-hoc promotion to the post of Post Graduate Teacher (PGT) on different dates, taken note of by the tribunal in the impugned order. There is no dispute that on the date of their respective ad-hoc promotions as PGT, they were eligible for promotion to the said post; there were sanctioned posts available for PGT, and; there was no impediment in the regular promotion of the respondents as PGT.

3. The promotion order in respect of each of the respondents contained the following stipulation:

"The promotion of all teachers who have been assigned tentative seniority or have not been assigned seniority at all, will be fully subject to assignment of final seniority in the feeder cadre from which being promoted. In such cases the Dy. Director of Educations may verify their date of appointment as TGT from the service book before any offer of promotion is made.

These promotions have been given on the emergent basis, for the convenience of the students, promotees have been sent in accordance with the vacancies available district wise, so keeping in view the student's interest Districts of the promotees will not be changed".

4. The petitioner held the DPC for regularisation of the promotion of the respondents in the year 2000 and they were given regular promotion vide order dated 14.07.2000, on the recommendations of the DPC held on 30.06.2000. The tentative seniority list of PGTs (Male & Female) appointed, promoted and absorbed on regular basis between 01.04.1990 to 31.03.2001 was issued vide officer order dated 04.12.2002, wherein in respect of the respondents their names were shown in the panel corresponding to the date of their ad-hoc promotion, and the date of promotion was shown as 14.07.2000. The seniority of the respondent was fixed on the basis of their regular promotion with effect from 14.07.2000.

5. Unlike the case of the respondents, in respect of TGT who were similarly promoted on ad-hoc basis in the year 1996, upon their regular promotion on a later date, they were treated as regularly promoted from the dates when the vacancies were available in the year 1996 i.e. 25.02.1996.

6. In this background, the respondent/ applicant in each of the aforesaid writ petition approached the tribunal. The tribunal, as aforesaid, has allowed the said OAs. The tribunal while allowing the OAs, takes note of the fact that it was not in dispute that the applicants were eligible at the time of their ad-hoc promotions, to be considered for promotion to the post of PGT. It was also the admitted position that they were granted ad-hoc promotion against available vacancies. The petitioner had indicated in the promotion orders that promotion of teachers who have been assigned tentative seniority or have not been assigned seniority at all, will be fully subject to assignment of final seniority in the feeder cadre from which they were promoted. The tribunal also takes note of the fact that there was no dispute that none of the

promotees had been promoted on ad-hoc basis in contravention of the seniority in the feeder cadre and all the promotees have been regularised.

7. To hold that the respondents were entitled to reckon their seniority in the promotional post from the date of their ad-hoc promotion in the aforesaid factual background, the tribunal placed reliance on the judgment of the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and Ors. v. State of Maharashtra & Ors.*, AIR 1990 SC 1607, wherein one of the principles recognised by the Supreme Court was as follows:

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation”.

8. The tribunal also held the conduct of the respondents to be discriminatory in relation to the respondent/ applicants, viz-a-viz the ad-hoc promotees of 1996 who were given seniority retrospectively while regularising their promotion. Pertinently, they had been given seniority from the date of the vacancies i.e. from dates even prior to their adhoc promotions. However, in the case of the respondent/ applicants, they were being denied regular promotion even from the date of their ad-hoc promotions.

9. The submission of Ms. Ahlawat is that the exercise that the petitioner has been required to undertake would leave all other similarly situated promotees at a disadvantage inasmuch, as, the petitioners would rank senior even to those who were senior to them in the feeder cadre.

10. We cannot accept this submission. It is for the petitioner to treat all the TGTs who were promoted like the respondent/ applicant on the same footing. The tribunal has not determined the inter se seniority of the respondent/ applicant *viz-a-viz* others similarly situated. All that the tribunal has directed is that the promotion of the respondents to the post of TGT should be reckoned from the date of their ad-hoc promotion in the factual background taken note of herein above.

11. The further submission of Ms. Ahlawat is that since the ad-hoc promotions were granted strictly in terms of seniority in the feeder cadre, the exercise would be one in futility.

12. We cannot accept this submission either. If the respondents are entitled to reckon their seniority in the TGT from the date of their ad-hoc promotion, since they were eligible for promotion on the said date and vacancies were also available, there is no reason to deny them that relief. If the submission of the petitioner is correct, then we fail to appreciate as to why the petitioner has preferred these petitions in the first place.

13. For the aforesaid reasons, we find no merit in these petitions.

The same are, accordingly, dismissed.


VIPIN SANGHI, J


A. K. CHAWLA, J

NOVEMBER 01, 2018

sr