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

+ W.P.(C) 8678/2019

KRISHAN KUMAR Petitioner

Through: Mr. M.K.Bhardwaj and Mr.
Shubham, Advocates.

versus

NAVODAYA VIDYALAYA SAMITI AND ORS. Respondents

Through: Mr. A.S.Singh, proxy counsel for Mr.
S.Rajappa, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **09.08.2019**

The petitioner assails the order dated 16.5.2019 passed by the Central Administrative Tribunal, Principal Bench in O.A. No. 2205/2013. The Tribunal has rejected the said Original Application of the petitioner wherein he sought fixation of his seniority by taking into account his date of initial appointment as TGT (SS) on All India Basis for the purpose of his next promotion to the post of PGT (Geography) and to consider his claim for promotion to the post of PGT with effect from the date when he became eligible or his juniors were promoted.

The petitioner was appointed as Trained Graduate Teacher (TGT) in Navodaya Vidyalaya Samiti (NVS) and was posted in Chandigarh region. Within the same region he served in the erstwhile state of Jammu and Kashmir and in 1996 he was transferred to Delhi region, on his own request. After his transfer, when promotions were sought to be made to the Post Graduate Teacher (PGT), the petitioner was aggrieved since some TGTs who were otherwise juniors to him on the basis of the overall length of service as TGT in NVS were promoted, while he was not. The petitioner

earlier preferred the Original Applications which led to passing of an order dated 25.10.2010 by the respondents rejecting the petitioner's claim. The stand of the respondents was that since the petitioner had sought voluntary transfer to Delhi region, it was a condition of his transfer that he would be placed at the bottom of the seniority in the Delhi region. Consequently, the claim made by the petitioner that he was senior to the other TGTs of Delhi region, merely on account of his overall length of service in the NVS as TGT, was rejected.

In support of his claim, the petitioner placed reliance on the case of one Mohd. Abutaleb, who was initially serving in Shillong region, and he was transferred on his own request to Patna region. The petitioner claimed that Mohd. Abutaleb retained his seniority of Shillong region despite his voluntary transfer. The stand of the respondents was that due to a mistake the services rendered by the said Mohd. Abutaleb in Shillong region was added to his service in Patna region while considering his case for promotion to PGT. It was also disclosed that the said Mohd. Abutaleb had been reverted.

The petitioner was not satisfied with the stand taken by the respondents, and consequently, preferred the aforesaid Original Application which has been rejected by the Tribunal. The Tribunal has taken note of the fact that when the petitioner was transferred, on his own volition, the office order dated 11.7.1996 clearly stipulated the following condition:

“As per the undertaking given by each individual the above mentioned officials will have to loose their seniority in the grade maintained by the respective ROs and will have to reckon their seniority in the grade being maintained by the ROs where they are transferred from the date of joining

at the new places of posting.”

The petitioner accepted the said condition and never challenged the same. His only plea was that in the case of Mohd. Abutaleb, the respondents had counted the services rendered by him in Shillong region even after his voluntary transfer to Patna region.

Even if it were to be assumed that Mohd. Abutaleb had wrongly been granted the seniority on the basis of his services rendered by him in Shillong region, despite his voluntary transfer, that would not vest the petitioner with the right to claim parity, since it is not open to the petitioner to claim negative equality. The respondents have clearly stated that the counting of seniority in the case of Mohd. Abutaleb was a mistake which they sought to correct. The submission of Mr. Bhardwaj is that the High Court of Patna has restored the seniority of Mohd. Abutaleb vide order dated 20.11.2017. That order has not been placed before us. In any event, the petitioner is bound by the condition of his transfer, which he has never assailed. He cannot wriggle out of his own undertaking that he will lose his seniority upon inter-regional transfer, and would be placed at the bottom of the seniority in Delhi region.

We, therefore, do not find any merit in the petition. Dismissed.

VIPIN SANGHI, J

ANUP JAIRAM BHAMBHANI, J

AUGUST 09, 2019/ib/jitender