

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1212/2002

Date of decision: 5.06.2002

R.L.Yadav & Another

.. Applicants

(By Advocate: Shri K.N.R.Pillai)

versus

Govt. of NCT of Delhi & Others

.. Respondents


(By Advocate: Mrs. Sumedha Sharma for R-1 and Shri
M.M. Sudan for R-2 and R-3)

CORAM:

The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)

The Hon'ble Shri M.P. Singh, Member(A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal?


(M.P. Singh)
Member(A)

11

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1212/2002

New Delhi, this 5th day of June, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Shri M.P. Singh, Member(A)

1. R.L. Yadav
Qr.No.4, Type V
Kasturba Polytechnic Residential Complex
Pitampura, Delhi-88
2. I.J. Garg
Qr.No.3, Type IV
Meerbhai Polutechnic Campus
Maharani Bagh, New Delhi .. Applicants

(By Shri K.N.R. Pillai, Advocate)

versus

Govt. of NCT of Delhi, through

1. Principal Secretary-cum-Director
Directorate of Training & Technical
Education, Muni Mayaram Marg
Pitampura, Delhi-88
2. Shri P.L. Kohli, OSD(TE)
Directorate of Training & Technical
Education, Muni Mayaram Marg
Pitampura, Delhi-88
3. Shri R.C. Sikka
Head of Department (Mech)
GB Pant Polytechnic
Okhla, New Delhi-20 .. Respondents

(Mrs. Sumedha Sharma, Advocate for R-1
Shri M.M. Sudan, Advocate for R-2 & R-3)

ORDER(oral)

Shri M.P. Singh, Member(A)

By the present OA, applicants (two in number) seek directions to set aside the order dated 2.5.2002 (A/1) in so far as it directs replacement of applicants by respondents No.2 & 3.

2. Briefly stated, applicant No.1, who was Head of Department (HOD) in the Ambedkar Polutechnic was transferred to Guru Nanak Dev Polytechnical by order dated 26.8.98 to look after the work of Principal of that Polytechnic. The appointment order stipulated that



Applicant will not get any additional remuneration and will have no claim for regular appointment. But by letter dated 15.10.98, he was conferred the full powers of HOD thus giving him full administrative and financial powers and responsibilities of Principal. When salary of Principal was denied to him, he filed OA No.1687/2000 which was allowed by this Tribunal vide its order dated 1.5.2001 directing the respondents to pay him pay and allowances of the post of Principal. Tribunal's order was challenged by the respondents before the Hon'ble Delhi High Court in CWP No.6368/2001, which was dismissed on 22.3.2002 thus upholding the order of the Tribunal.

3. The second applicant, who is also a regular HOD of the GB Pant Polytechnic was appointed by order dated 7.12.99 to look after the work of the Principal of that Polytechnic. Thereafter by order dated 30.12.99, second applicant was also given full financial and administrative powers of Principal w.e.f. 7.12.99. Suddenly respondents have passed the impugned order dated 2.5.2002 posting 3 HODs as Principals of Polytechnics for one year or till candidates selected by UPSC join, whichever is earlier. Applicants have represented on 3.5.2002 against their reversion but without success. According to the applicants, R-3 and R-4 do not have the prescribed qualification of Master's degree in Engineering/Technology as compared to the applicants who have the prescribed essential qualifications and have continued in service for three and half and two and half years respectively as Principal and therefore they should not have been replaced by R-2 and R-3. Drawing support from the judgement of apex court in State of Haryana Vs. Piara Singh JT 1992(5) SC 179, applicants contend that ad



hoc or temporary employee should not be replaced by another ad hoc or temporary employee and that he must be replaced only by a regularly selected employee. They are thus before us seeking to quash the order dated 2.5.2002.

4. Respondents have contested the case in their reply and have stated that both R-2 and R-3 fulfil qualifications and eligibility criteria laid down for the post of Principal as per the recruitment rules which stand notified by the Government and are in existence on date. No disqualification can be sought to be imposed on them on the basis of any recommendation by any authority or any proposal yet to be approved by the competent authority for amendment into R/Rules and without their amendment in the R/Rules being notified. R-1 had separately issued orders for appointing R-2 and R-3 as HODs also in respect of Polytechnics under their charge. Both the applicants have refused to accept the orders dated 2.5.2002. In so far as first applicant is concerned, the matter is still sub judice as the department has filed an SLP against the judgements of the Tribunal as well as Hon'ble Delhi Court. R-2 and R-3 being the senio-most HODs were appointed Principals on ad hoc basis with the approval of Lt. Governor, the appointing authority, pending regularization through UPSC on the basis of existing R/Rules.

5. Respondents also contend that the judgement in Piara Singh's case (supra) relied upon by applicants would not support their case. The present case is different because the private respondents appointed as Principals fulfil the qualifications as per notified R/Rules in



existence. As per the R/Rules notified on 1.4.1969, the qualifications for the post of Principal of Polytechnic are as under:

Essential:-

- (1) At least a Second Class Degree in Engineering of recognized University of equivalent;
- (2) About 8 years professional experience of which three years should be in teaching or admn./Planning of technical education programme.

Desirable:- Post Graduate Degree in engineering

6. Respondents further contend that as regard qualifications recommended by ^{AICTE &}~~UPSC~~ for the posts in Polytechnics, they have already initiated the process of amendment of Recruitment Rules to incorporate qualifications recommended by All India Council for Technical Education (AICTE). The rules will be notified as soon as these are approved by UPSC. AICTE being a statutory body regulating matters relating to technical education, the norms laid down by it are generally accepted by Government. The revised qualification as per AICTE directives shall apply only if the entire scheme of AICTE as conveyed on 30.12.99 is accepted by the Government. These recommendations of AICTE have not yet been accepted by Government of NCT of Delhi. In fact there was no reversion in respect of the applicants as they were not appointed or promoted to the post of Principals. They were only asked to look after the work of Principal. In view of this position, the OA be dismissed.

7. Reply on behalf of R-2 and R-3 has also been filed on similar lines as that of Respondent No.1.

mk

8. Heard the learned counsel for the rival contesting parties and perused the records.

9. During the course of the arguments, the learned counsel for the applicant has argued that since this Tribunal had held that first applicant's posting as Principal and HOD was not a short term arrangement to discharge the routine duties of Principal but was a long arrangement with financial powers, applicants should not have been reverted/replaced by R-2 & R-3. On the other hand, learned counsel for the respondents submitted that the applicants were never appointed or promoted to the post of Principal but were only asked to perform the additional duties of the post, ^{and therefore, &} there is no question of their reversion. That apart, there was no order of this Tribunal to regularise their services as Principal but the only direction was to pay the salary for the post of Principal.

10. The learned counsel for the applicant next contended that both R-2 and R-3 do not possess the requisite qualification as prescribed in AICTE Notification dated 30.12.99, i.e. Master's Degree in appropriate Branch of Engineering/Technology with First Class at Master's or Bachelor's level or Ph D in appropriate Branch of Engineering/Technology with 15 years experience in teaching out of which atleast 5 years shall be at the level of HOD or equivalent. On this account also, applicants should not have been replaced by R-2 and R-3.

11. However, learned counsel for the respondents has contended that the aforesaid recommendations of AICTE shall not be applicable in the present case as the same

cdh

are to be accepted by the Government of NCT of Delhi and thereafter Recruitment Rules have to be amended accordingly.

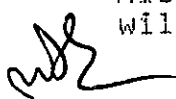
12. In this context, learned counsel for the applicant has drawn our attention to the judgement of Hon'ble Delhi High Court in CWP 1613/2001 decided on 16.3.2001 and contended that the recommendations of AICTE shall be binding. In this case the Delhi High Court has set aside the order of the Tribunal and directed the respondents to comply with the direction of AICTE. These recommendations of the AICTE made in 1999 are therefore mandatory and shall be binding. The learned counsel has also submitted that the Recruitment Rules were amended in the year 1989 prescribing higher educational qualifications for appointment to the post of Principal.

13. In this connection, the learned counsel for the respondents has also drawn our attention to AICTE notification dated 30.12.99 regarding recommendations of AICTE for revision of pay scales and service conditions of teachers of Technical Institutions (Diploma). Para 5.0 relating to qualifications stipulates as under:

5(2) Where qualifications and experience prescribed for a post in this pay revision are higher than the qualifications and experience prescribed by AICTE for that post prior to this revision,

(i) the revised qualification and experience will be required only for fresh appointees to that post and will not be insisted on for existing incumbents working on those positions;

(ii) for open selection in a higher cadre position through advertisement internal candidates presently working in a lower position will be exempted from the prescribed higher qualification and experience to the extent that they will be required to possess only the qualification and experience prescribed by AICTE prior to this pay revision. This relaxation will be available only for a period of 5 years from



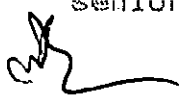
the date of issue of this notification. Thereafter, internal candidates must also possess the qualification and experience prescribed in this notification.

3. Teachers already in service prior to January 1, 1996 and who at the time of their recruitment possessed only a second class in their degree at Bachelor's or Master's level (but met all the qualification requirements prescribed by AICTE at the time of their recruitment) shall be exempted from the requirement of First Class for the Degree they had at the time of their recruitment.

14. The learned counsel for the respondents has further contended that the higher educational qualification prescribed by AICTE for appointment to the post of Principal provide for certain exceptions as mentioned above. As per para 5.3, the higher qualification will not be applicable to those already in service prior to 1.1.96. On the same analogy the higher qualification prescribed as per amendment made in 1989 would not be applicable to R-2 and R-3.

15. The learned counsel for the applicants has then contended that the relaxation in 5.3 above is only with regard to the 'First Division' and not with reference to M.Tech degree. However, on careful reading of the above, we find that 5.3 provides exemption with regard to both in the case of M.Tech Degree as well as First Division.

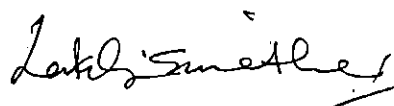
16. It is also an admitted position that both R-2 and R-3 are senior to the applicants. The promotion of R-2 and R-3 has not been made on regular basis but only for one year or till candidates selected by UPSC join, whichever is earlier. According to DoPT guidelines, ad-hoc promotion shall be made on the basis of seniority-cum-fitness even where promotion is by



selection method and that only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for ad hoc appointments. In view of this position, applicants cannot claim to continue in the post of Principals when persons senior to them have been appointed on ad hoc basis in accordance with the rules. Therefore, we do not find any fault with the order passed by respondents dated 2.5.2002 replacing the applicants by R-2 and R-3.

17. In the result, for the reasons recorded above, we find no merit in the present OA and the same is dismissed. Interim order passed on 7.5.2002 stands vacated. No costs.


(M.P. Singh)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman(J)

/gtv/