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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O. A. No 1449/2001

Date of Decision 21.11.2002

Ms. Muklesh Yadav ... Applicant

Sh. Rohit Sharma ... Advocate for the Applicant

VERSUS

Govt. of NCT of Delhi ... Respondents
and ors.

Mrs. Avnish Ahlawat, learned.. Advocates for the Respondents
counsel through proxy counsel
Sh. Mohit Madan

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tamai, 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? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Vice Chairman (J)

128

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1449/2001

New Delhi this the 21st day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tamai, Member (A)

Ms. Mukesh Yadav,
W/O Sh. Randhir Yadav,
R/O RZ-BM, Gali No.4,
Indira Park, Palam Colony,
New Delhi.

..Applicant
(By Advocate Shri Rohit Sharma)

VERSUS

1. National Capital Territory
of Delhi, Secretary, Ministry
of Education, Govt. of NCT of
Delhi.
2. Director of Education,
Govt. of National Capital Territory
of Delhi, Delhi.
3. Mr. Surender Kr. Shandori,
1909, Malkaganj, Delhi.
4. Mr. Joginder Kumar,
Sarvodaya Kendriya Vidyalaya,
Madipur, Delhi.
5. Mr. Ashwani Kr. Yadav,
Madhu Ganj, North Ghonda,
Delhi.
6. Director,
Directorate of Employment,
2, Battery Lane, Rajpur Road,
Delhi-6

..Respondents
(By Advocate Mrs. Avnish Ahlawat,
Learned counsel through proxy
counsel Shri Mohit Madan)

O R D E R (ORAL)

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

This application has been filed by the applicant
impugning the action of the respondents in not appointing her
to the post of Physical Education Teacher (PET) by including
her name in the approved list published by them dated
5.11.1996.

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18

2. The brief relevant facts of the case are that the applicant belongs to OBC ~~category~~^{Y8}. She has applied for recruitment to the post of PET in accordance with the Circulars issued by the respondents. She is aggrieved that her name has not been included in the select list issued by the respondents dated 5.11.1996. According to the applicant, she possesses all the educational qualifications required for selection to this post. Admittedly, the applicant had secured 65 marks as per the marking Scheme adopted by the respondents for all the eligible candidates. Her grievance is that persons obtaining lesser marks have been appointed to the post of PETs ignoring her prior claims on the basis of merit.

3. Before filing this application, the applicant had filed Writ Petition before the Hon'ble Delhi High Court(CW 1865/99 and C.M.11232/2000) which was dismissed as withdrawn by order dated 16.4.2001. The Hon'ble High Court has stated that this is done "to enable the petitioner to take resort to appropriate statutory remedy available to her" i.e. on the basis of the submissions made on behalf of the petitioner that she would approach this Tribunal. Thereafter, the OA has been filed on 1.6.2001. Notice to respondents was issued in June, 2001 (wrongly mentioned as May) and reply has been filed on behalf of respondents by one Shri S.S.Rathore, Joint Director (Administration), Directorate of Education, Delhi on 10.9.2001. In this reply, the respondents have submitted, inter alia, that all individuals whose names were sponsored by the Employment Exchange (EE) were considered for appointments to the post of PET. They have stated that two

18

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separate panels were prepared for the years 1995-96 and 1996-97. It is relevant to note that they have further stated that the petitioner could not make the grade in the year 1995-96 as she was not found eligible on the ground that she had only B.Sc. (Phy.Edn.) as qualification and not B.PEd., which was the requirement under the Rules. This was on the basis that in the Employment Exchange Card, the qualification - B.PEd was cancelled.

4. The applicant had filed a rejoinder on 8.10.2001, in which she has submitted that she was not considered for the year 1995-96 despite the fact that she was B.PEd. She has also referred to the Identity Card which carried N.C.O.Code No. 19360 which was issued by the EE to the applicant who had qualified B.PEd. Learned counsel for the applicant has relied on the communication from the EE office dated 20.5.2002 addressed to the applicant (copy placed at page 58 of the paper book). This letter is on the subject regarding the cuttings in Column Numbers 5 and 6 of the EE.identity card. A copy of this EE card said to have been submitted by the applicant to the respondents is also given at page 17 of the paper book, which has the cuttings in Columns 5 and 6 with No. 19360 also given below. Shri Rohit Sharma, learned counsel has submitted that in the facts and circumstances of the case, the officer who has filed the affidavit dated 10.9.2001 on behalf of respondents 1 and 2 in the Tribunal had already got the necessary clarifications from the EE, which he has chosen to ignore by reiterating the stand of the respondents that the applicant did not possess the required qualification i.e. B.PEd. as the EE.Card shows that the qualification of B.PEd was cancelled.

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5. Learned counsel for the applicant has submitted that in the light of the clarifications given by the EE to the concerned officer of the Department, the reply filed by the same officer on behalf of respondents 1-2 should, therefore, be taken note of seriously and the applicant should not be penalised for the mistakes committed by the respondents. He has, therefore, prayed that exemplary cost may be awarded to the applicant. During the hearing, learned proxy counsel for the respondents has submitted that the respondents have committed a mistake in disqualifying the applicant as if she had not possessed the required qualification i.e. B.PEd in the reply affidavit filed on 10.9.2001. Learned proxy counsel for the respondents has very vehemently submitted that the OA is barred by limitation. In any event, according to him if appointment is given to the applicant for the post of PET and the OA is allowed, applicant cannot be given any back wages. He has relied on the judgements of the Tribunal in Miss Shahana Asrar Vs. Govt.of NCT of Delhi through the Chief Secretary and Ors (OA 2934/2001), Arun Kumar Vs. Govt.of NCT of Delhi through Chief Secretary and Ors (OA 1943/1999) and Smt.Anjana Vs. The Lt.Governor of NCT of Delhi through Chief Secretary and Ors. (OA 2364/2000), copies placed on record.

6. We have carefully considered the submissions made by the learned counsel for the parties. In the facts and circumstances of the case, the stand taken by the concerned officer of respondents 1-2 in the reply affidavit is deprecated. In this connection it would be pertinent to produce the relevant portion of the letter of the EE dated 20.5.2002 addressed to the applicant and relied by her which reads as below:-

"Reference to your letter dated 16.5.2002, it is to inform you that the reply on the subject cited above has already been communicated to Shri S.S.Rathore, JDE(Admn.)

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(21)

Dte.of Edn., Estt.IV Br., Old Sectt. Delhi, 54
vide this office letter dated 14.5.2001 and
28.6.2001. It is further informed that
applicant registered with qualification of
B.Ped and Bsc. (Phy.Edn.) under NCO code No.
193.60 for the post of Physical Education
Teacher. At the time of registration your old
registration no.mentioned by you in Col.no.5
was cancelled by putting a line on it, your
correct registration no. is 9423395/DLR dt.
9.9.94 under NCO Code no. 193.60 as per the
record of this office. In view of the above
you are advised to take up this matter with
Dte.of Education directly".

7. It is noticed from the aforesaid letter that the EE
Office has already communicated to the officer i.e Shri
S.S.Rathore, JDE (Admn) by their letters dated 14.5.2001 and
28.6.2001 on the subject explaining the cutting in Columns 5
and 6. They have also referred to the specific entry of the
NCO Code No. 193.60 and that applicant has the qualification
of B.PEd and B.Sc (Phy.Edn.). and have stated that the
cutting means that the applicant has been given correct
registration.

8. It is for the above reasons that we find the
affidavit filed by the concerned officer on behalf of
respondents 1 and 2, baseless and arbitrary. In spite of the
clarifications given by the EE that the applicant was
eligible in the year 1995-96, the contentions of the
respondents that she was only B.Sc.(Phy.Edn) and not B.PEd.
which was the requirement under the rules is unreasonable.
The stand taken by the respondents is, therefore, totally
unacceptable and not in accordance with the rules.

9. We are also not impressed by the contentions of
Shri Mohit Madan, learned proxy counsel that perhaps the EE
had not sent the letters referred to in the aforesaid
communication dated 20.5.2002. If that was so, we do not
also understand as to how today he, on instructions from the
respondents admits that there was an error on their part.
The reply filed by the respondents that she was not found

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eligible on the ground that there were cuttings in the Registration card issued by the EE cannot be accepted because they could have very well sought the clarifications from the EE., if they had any doubt in the matter. According to the EE's letter dated 20.5.2002, necessary clarification had already been communicated by that office to the respondents by their office letters dated 14.5.2001 and 28.6.2001 and, thereafter, the reply affidavit has been filed to this OA. This shows the stand taken by the respondents to be even more unreasonable and arbitrary. This has also to be viewed with reference to the facts of this case where it is regarding recruitment of a candidate belonging to OBC.

10. In the select list issued by the respondents dated 5.11.96, 11 candidates have been placed in the OBC category in which at least three of whom have less than 65 marks, which was the mark obtained by the applicant, as also admitted by the respondents. In the circumstances of the case, we see merit in the submissions made by Shri Rohit Sharma, learned counsel that because of the aforesaid mistakes committed by the respondents, the applicant should not suffer.

11. Taking into account the High Court's order dated 16.4.2001, the aforesaid facts and the fact that the applicant has filed this OA on 1.6.2001, we reject the submissions made by Shri Mohit Madan, learned proxy counsel that the OA should be dismissed on the ground of limitation. The applicant had pursued her remedy earlier before the Hon'ble High Court which had permitted her to withdraw the Writ Petition so that she can approach the Tribunal. This she has done within a reasonable time. In the facts and circumstances of the case, the judgements relied upon by the respondents are distinguishable from the facts in this case. In this connection it is relevant to note that even till

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10.9.2001 when the affidavit was filed by the respondents, in spite of the clarifications given by the EE, they have persisted in the wrong stand which now they have admitted to be erroneous. They cannot, therefore take advantage of their own wrong actions against the applicant on the technical ground of plea of limitation. Learned proxy counsel for the respondents has also categorically mentioned that he also represents respondent No 6 i.e. the Directorate of Employment, Battery Lane, Rajpur Road, Delhi which has clarified that the applicant was eligible for recruitment to the post of PET.

12. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:-

(i) The respondents are directed to appoint the applicant as Physical Education Teacher (PET) immediately giving her notional benefit of seniority from the date her juniors in the panel dated 5.11.1996 have been appointed to that post;

(ii) In the circumstances of the case, although the applicant will not be entitled to back wages for the period she has not worked in the post of PET but she will be entitled to fixation of her pay on par with the pay of her junior in that post as per the aforsaid panel;

(iii) The above action shall be taken by the respondents within one month from the date of receipt of a copy of this order;

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261

(iv) In the facts and circumstances of the case, we consider it appropriate to impose cost of Rs.5000/- (Rupees five thousand only) against the respondents 1 and 2 and in favour of the applicant which ^{it} shall be open to the concerned respondents to recover from the aforesaid/officer.

(Govindan G.Tampi)
Member (A)

W.H.K
W.H.K

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