

Central Administrative Tribunal, Principal Bench

Original Application No. 2341 of 2001

New Delhi, this the 13th day of December, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.P. Singh, Member(A)

Ms. Rita,
D/o Mr. Raghunath Prasad,
R/o RZ-139, Dayal Park,
West Sagar Pur,
New Delhi

....Applicant

(By Advocate: Shri Pramod Gupta)

Versus

1. Government of NCT of Delhi
through the Secretary (Education)
5, Sham Nath Marg,
Delhi-54
2. The Director of Education,
Old Secretariat,
Government of NCT of Delhi,
Delhi.
3. The Deputy Director of Education
District South,
Directorate of Education,
New Delhi
4. Mr. Raghbir Singh Akela,
B-46, Delhi Administration Flats,
Karkardooma, Delhi

....Respondents

(By Advocate: Shri Rajan Sharma, for official respondents
Shri Ashwini Bhardwaj, for private respondent)

O R D E R

By Justice V.S. Aggarwal, Chairman

Applicant is a graduate ^{with} in Fine Arts as one of the subjects. She had been recruited as TGT(Painting) by the Department of Education. There are various posts of PGT like Painting, Commercial Arts, Graphics, Sculpture and Engineering Drawing. The qualifications prescribed for the post of PGT (Graphics) provide that the candidate should be a Bachelor in Fine Arts with Graphic Specialisation or Higher Secondary/Intermediate/Sr. School Certificate Examination with minimum 5 years diploma in

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Painting/Commercial Art with Graphics as one of the subjects.

2. As per the applicant, the educational qualification for promotion from TGT to PGT is the same as that of direct recruitment with five years regular service in the grade of 5500-9000. In the year 2001, the Directorate of Education prepared a separate eligibility list of PGTs like Graphics, Sculpture, Engineering Drawing, Commercial Arts and Painting and also a list of TGT (Female) for promotion to PGT (Drawing). Earlier no such lists were being drawn. This eligibility list of 23.4.2001 was not circulated nor was notified. It was only on the enquires of the applicant that she was able to obtain a copy of the same. Though the list was purported to have been circulated on 23.4.2001, it reached the zonal office on 4.5.2001 and the last date for filing the objection was 10.5.2001. The teachers had no knowledge of the same on account of the summer vacations. There has been an undue haste in this regard. Only one name of respondent no.4 (Raghbir Singh Akela) was shown to be eligible for the post of PGT (Graphics).

3. Applicant contends that she has the same educational qualification as that of respondent no.4 and is senior to him. She was appointed on 30.12.83 while respondent no.4 was appointed on 6.12.85. The said action of the respondents is asserted to be malafide contending that there was no separate eligibility list for PGT (male) and nor there was a separate eligibility list for the post

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of PGT with regard to Female. There was only a consolidated list of PGT (Drawing). On these broad facts, the applicant seeks quashing of the list of 23.4.2001 and the order passed by respondent no.2 promoting respondent no.4 to the post of PGT (Graphics).

4. The petition has been contested. It has been asserted that for promotion to the post of Lecturer(PGT), eligibility list is cast on year to year basis after inviting applications from teachers of feeder category who fulfil the requirement of recruitment rules. The necessity of preparing eligibility list for promotion to the post of PGT/Lecturer was due to the reason that additional educational qualification as per recruitment rules is required to be possessed by a teacher of feeder category. A teacher of feeder cadre may acquire Post Graduation in one or more subjects and in case he/she wants to be considered for promotion in any of the subjects, he or she will have to apply for inclusion of his/her name in the eligibility list of a particular subject. This procedure for promotion in the Directorate of Education is different from procedure of other Central/State Govt. departments where no additional qualification is required for a higher post. All teachers of feeder category are not by itself eligible for promotion to the post of Lecturer. It has been pointed that since the applicant had not applied for the post of Lecturer (Graphics) on the prescribed proforma till date, the question of including her name in the eligibility list has not arisen. Mere intimation to the department by the applicant that she had acquired

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additional educational qualification does not make her entitle for inclusion of her name in the eligibility list. If a junior teacher of the feeder category applies in the prescribed proforma for inclusion of his/her name in the eligibility list and the senior does not prefer to apply for such promotion, then the junior who has applied in the prescribed proforma before the stipulated date is to be considered for promotion. On that count, the senior person cannot have any grievance.

5. Respondents 1 to 3 further assert that on basis of particulars from different teachers, the tentative eligibility list had been drawn. It had been circulated vide the office memorandum dated 23.4.2001. It was clearly mentioned that separate forms should be used for different subjects. The last date for filing objections was fixed as 10.5.2001. About 100 objections were received in the department for all the subjects and final eligibility list was prepared. The applicant did not apply for inclusion of her name in the eligibility list for the post of Lecturer (Graphic) nor she has put in any objection. Only one drawing teacher (respondent no.4) applied for inclusion of his name for the post of Lecturer (Graphic) and his name was included in the eligibility list. He was considered by the departmental promotion committee and was so promoted. In this process, the contentions of the applicant to the contrary were rebutted.

6. In the separate reply filed by respondent no.4, almost similar pleas had been taken. It was alleged that



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the applicant did not apply for inclusion of her name in the eligibility list for the post of Lecturer (Graphic) by the stipulated date i.e. 31.12.2000. Therefore she had not been considered for promotion. Since the name of the applicant was not available in the eligibility list for Lecturer (Graphic), question of her promotion did not arise. Specific plea was raised that the applicant had applied only for the post of Lecturer (drawing/painting) while respondent no.4 applied for both the posts. He had been considered and so promoted. It had further been asserted that the main thing required for teaching as Lecturer (Graphic) is serigraphy (Silk Screen Printing) as per the syllabus provided by the department. Respondent no.4 was fully qualified in it. The applicant had no knowledge about the same. The seniority list of males and females was stated to be different.

7. During the course of submissions, it was not disputed that the person posted was at Dr.Rajendra Prasad Sarvodaya Vidyalaya, President State, New Delhi. It had one post of PGT (Graphics). It is admittedly a co-educational institution.

8. On behalf of the respondents it was highlighted that the applicant was in the list of teachers for female/girls schools and in the said school i.e. Dr.Rajendra Prasad Sarvodaya Vidyalaya, the number of girls students was very small and therefore, in any case, she could not have been so appointed. The said contention of the respondents indeed has to be stated to be rejected.

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Our attention has been drawn towards the Establishment Manual which clearly provides the guidelines for postings and transfers of teachers under the Directorate of Education, Govt. of NCT Delhi. In unambiguous terms, it provides that in schools other than co-education, male teachers will be posted in boys school and female teachers in girls school as far as possible. It reveals clearly that firstly it is not fetters on the powers of the authority not to post a female teacher in a boys school. That apart, the instructions clearly show that so far as co-educational schools are concerned, there is no such direction also. In that view of the matter, the said contention necessarily has to fail.

9. The recruitment rules in column 2 for the post of PGT (Lecturer) in Graphics clearly provide:

"Column 2

III. Graphics (Classes XI & XII)

Bachelor in Fine Art (with Graphic specialisation) or Higher Secondary/ Intermediate/ Sr. School Certificate Examination with minimum 5 years (full time) diploma in Painting/ Commercial Art with graphics as one of the subjects."

It was not disputed before us that the applicant as well as respondent no.4 were eligible to be considered for being posted. Consequently we are not probing further into the said controversy.

10. On behalf of respondents, it was highlighted that when the circular was issued, the applicant applied for being considered to the post of PGT (Drawing) and

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therefore, she has no claim in this regard. On 29.10.2002, we had adjourned the matter to produce the record of the department because this fact had been denied by the applicant's learned counsel. Despite two adjournments, learned counsel for respondents conceded that the said departmental file to indicate that applicant had applied for the post of PGT (Painting) is not available. Once such an indication had been given, we did not feel it appropriate to further adjourn the matter nor a further adjournment was claimed by the respondents. The conclusion would be that the applicant cannot be held to have applied for the post of PGT (Painting).

11. The main dispute however was that applicant contends that no option nor any reasonable opportunity had been given to her to opt or file objections, if any. We have already given the resume of the facts alleged by the applicant. She contends that the circular only reached the zonal office on 4.5.2001. The last date for filing objections on the same was fixed as 10.5.2001 when there were summer holidays. She never came to know about it. There is no denial to the fact that circular of 23.4.2001 had reached the zonal office on 4.5.2001. It was followed by Saturday and Sunday. Thus there was precious little time even if the assertions of the respondents were accepted to file any objection by 10.5.2001.

12. In all fairness, when such a fact has to take place, a reasonable time must be granted to a concerned person. Reasonableness has to be seen with respect to

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facts and circumstances of each case. No specific yardstick can be provided.

13. What is the position herein? The circular dated 23.4.2001 reached the zonal office on 4.5.2001. It was followed by Saturday and Sunday which were holidays. At best it would reach the school of the applicant sometime on 7.5.2001 or 8.5.2001 followed by summer vacations. In the peculiar facts, therefore, it cannot be termed that any reasonable time was granted to the applicant to give her option or objections. Even if we accept the contention of the respondents that it had been circulated, in face of the fact that no reasonable time had been granted, the contention of the applicant necessarily must prevail. In this backdrop, it must be held that the selection of respondent no.4 so made in undue haste, cannot be approved.

14. For these reasons, we allow the application and -

(a) quash the selection of respondent no.4 to the post of PGT (Graphics);

(b) direct that a fresh circular should be issued calling for objections/options from all the concerned teachers in accordance with law;



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13. What is the position herein? The circular dated 23.4.2001 reached the zonal office on 4.5.2001. It was followed by Saturday and Sunday which were holidays. At best it would reach the school of the applicant sometime on 7.5.2001 or 8.5.2001 followed by summer vacations. In the peculiar facts, therefore, it cannot be termed that any reasonable time was granted to the applicant to give her option or objections. Even if we accept the contention of the respondents that it had been circulated, in face of the fact that no reasonable time had been granted, the contention of the applicant necessarily must prevail. In this backdrop, it must be held that the selection of respondent no.4 so made in undue haste, cannot be approved.

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(b) direct that a fresh circular should be issued calling for objections/options from all the concerned teachers in accordance with law;

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(c) to make sure that the interests of the students is not affected. It is directed that till such time the person is not posted as PGT (Graphics), respondent no.4 would continue to discharge such duties; and

(d) the exercise as indicated above should preferably be completed within six months from the receipt of the certified copy of the present order.

M.P. Singh
(M.P. Singh)
Member(A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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