

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1957/99  
M.A.No.94/2000

on'ble Shri Justice V.Rajagopala Reddy, VC(J)  
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 28th day of January, 2000

Anupam Yadav  
d/o Shri D.R.Yadav  
r/o B-132, Prashant Vihar  
Delhi. ..

Applicant

(By Shri Ajesh Luthra, Advocate)

Vs.

1. Govt. of N.C.T. Delhi  
through Secretary(Education)  
Old Secretariate  
Delhi - 110 054.
2. The Director of Education  
Old Secretariate  
Delhi - 110 054. .. Respondents

(By Shri Vijay Pandita, Advocate)

O R D E R (Oral)

By R.K.Ahooja, Member(A)

The applicant, who belongs to O.B.C.Category, had submitted an application, in response to the advertisement dated 21.1.1997, for the post of Trained Graduate Teacher (TGT) in the Education Department of Govt. of N.C.T. of Delhi. She claims that as per the Scheme devised by the respondents, she was entitled to 43 marks. The respondents had fixed cut off point for selection of 41 marks. Her grievance is that despite the fact that she had more than the cut off marks, she has not been selected. She also submits that while the cut off marks in respect of female candidates had been fixed at 41, in case of male candidates, the cut off marks had been fixed at 36. For this reason, she alleges discrimination

pointing out that instead of giving the preference to women, the respondents have acted contrary to their avowed policy decision.

(1)

2. The respondents in the reply have stated that there is a long standing practice of appointing male and female teachers separately. They also submit that there is no discrimination on their part in fixing different cut off marks in different subjects for the male and female candidates. According to the respondents, the cut off marks depend upon various variables such as number of vacancies, number of applicants and marks obtained by the candidates in different examinations. On the claim of the applicant that she was entitled to 43 marks, the respondents state that the applicant's claim for weightage marks for state level participation in sports and 'Vidyadaan' could not be accepted and hence the applicant was only entitled to 39 marks which was below the cut off level of 41 marks.

3. We have heard the counsel. The learned counsel for the applicant relies on the orders of this Tribunal in Km. Vandana Vs. Govt. of N.C.T. of Delhi OA No.838/99, decided on 14.12.1999, wherein, on similar facts and circumstances, directions were given to the respondents to reconsider the case of the applicant on the basis of the same minimum cut off marks as in the case of male candidates. The learned counsel for the respondents, however, cites the case of Ms. Nitika Garg Vs. Govt. of N.C.T. of Delhi OA No.2274/97 decided on 2.7.1998. In that case the allegation of the applicant was that the applicant who

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was a female candidate, was entitled to be considered on the basis of the same cut off marks as was fixed for male candidates. This plea was rejected. The learned counsel for the respondents also submits that against a similar case the SLP filed had also been dismissed by the Apex court.

(2)

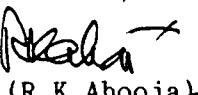
4. We have carefully considered the aforesaid submissions on both sides. We have also carefully gone through the orders of this Tribunal. Ms. Nitika Garg (Supra), we do not find that the controversy decided in that case and the facts before us in the present OA are the same. The claim of the respondents that the selections of the male and female candidates are to be made separately is not disputed; nor is their right to fix different cut off marks for the two categories. However, as pointed out by this very Bench in the case of Km. Vandana (Supra) the fixation of the cut off marks has to be with regard to the availability of vacancies and the availability of candidates. The respondents themselves in their reply have admitted the position that the fixation of cut off marks depend upon various variables such as number of vacancies, number of candidates and also number of marks obtained by such candidates in different subjects. In Km. Vandana's case the Tribunal had noted that the higher cut off percentage was fixed for the female candidates as compared to the male candidates even though sufficient number of female candidates were not available at that cut off marks. In view of this position, the Tribunal had felt that there was no rationale in fixing higher cut off marks in respect of female candidates. In the present case

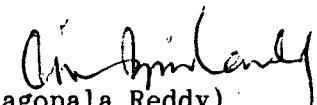
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also we find that the allegation of the applicant is on the same ground that the respondents are not able to fill up all the posts at the cut off percentage fixed in respect of the female candidates belonging to OBC category. In view of this position, we consider that the ratio of the Tribunal's Judgment in Km. Vandana's case (Supra) applies squarely in the present case.

(3)

5. In the result, the OA is allowed. The respondents are directed to reconsider the case of the applicant on the basis of the same minimum cut off marks as in the case of male candidates or such minimum cut off marks as may be required so that all available vacancies can be filled up in the female category. The applicant will be offered the appointment as Trained Graduate Teacher (TGT) if on the basis of the revised cut of marks she makes the grade. This will be done within a period of three months from the date of receipt of a copy of this order. No order as to costs.

  
(R.K.Aahooja)  
Member(A)

  
(V.Rajagopala Reddy)  
Vice-Chairman(J)

/rao/