

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2354/1999

New Delhi, this 5th day of March, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Shri M.P. Singh, Member(A)

(8)

Rashpal Chand Katoch  
652, GH-V & VII, Paschim Vihar  
New Delhi .. Applicant

(By Shri B. Krishan, Advocate)

versus

1. Chief Secretary  
Govt. of NCT of Delhi, Delhi
2. Director of Education  
Old Secretariat, Delhi
3. Dy. Director of Education  
District West (Zone No.17)  
Karampura, New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

By Shri M.P. Singh

Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 challenging the order dated 25.10.99 issued by the Govt. of NCT of Delhi circulating the names of eligible Trained Graduate Teachers (TGTs, for short) whose names would be considered in the DPC for promotion to Post Graduate Teachers (PGTs, for short).

2. Brief facts of the case that the applicant joined service as Yoga Teacher w.e.f. 17.1.83. Thereafter he acquired PG Degree-MA (Political Science) in February, 1988, B.Ed. Degree in 1993 and another PG Degree MA (History) in November, 1995. According to the applicant, he was assigned duties of a regular teacher for teaching middle classes in social studies.



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Respondents have amended the R/Rules in 1996. In response to notification dated 9.4.99, applicant submitted his application for promotion to the post of Lecturer on 28.4.99. Respondents thereafter have again amended the R/Rules and excluded the category of Yoga Teachers etc. as feeder cadre for promotion to the post of PGT. Aggrieved by this, applicant has filed the present OA.

3. Respondents have contested the case and contended that the Directorate of Education recruits teachers to the post of Lecturers by way of departmental promotions as well as through direct recruitment in accordance with the R/Rules. The feeder cadre of lecturers previously called PGT is TGT/LT and equivalent misc. categories like PET, music, drawing etc. for the respective category. Prior to amendment in R/Rules of PGT dated 26.2.96 (Annexure R-1), there was some grouping of subjects of PGTs for which promotions had to be done from select feeder cadre teachers like only language teachers who could be considered for promotion to the post of PGT (Hindi, Punjabi, Sanskrit, Urdu, Persian). Likewise for PGT (Drawing) only drawing teachers were eligible. Similar was the case in other subjects also.

4. The Department had earlier amended R/Rules for the post of PGT vide notification dated 26.2.96 (Annexure R-2) which created a number of difficulties in implementation of the R/Rules as the same violated the

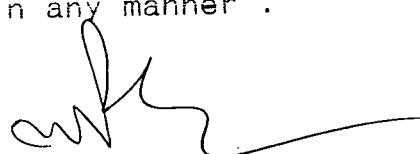


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orders of the Government of India. Thereafter, respondents vide notification dated 4.11.99 again amended the R/Rules and the position before the amendment dated 26.2.96 was restored. As per these amended R/Rules, the applicant is not eligible for promotion to the post of TGT and therefore his name has not been included in the eligibility list dated 25.12.99 and in view of this, he is not eligible for promotion to the post of PGT.

5. We have heard the rival contentions of the contesting parties and perused the records.

6. During the course of the arguments, learned counsel for the respondents drew our attention to the judgements of the Supreme Court in the cases of Mallikarjuna Rao & Ors. Vs. State of Andhra Pradesh & Ors. (1990) 2 SCC 707 and also V.K.Sood Vs. Secretary, Civil Aviation 1993 Supp(3) SCC 9. In <sup>the first of</sup> ~~both these~~ cases, the apex court has held that "the power under Article 309 to frame rules is the legislative power. This power under the constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner".



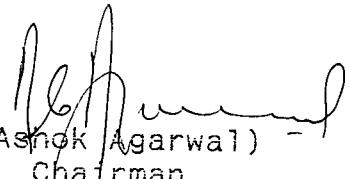
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7. The learned counsel for the respondents also drew our attention to the judgement of the Principal Bench of this Tribunal dated 2.1.2001 by which OA No.2300/99 was dismissed following the decisions of the apex court supra. From a perusal of these judgements, we find that the present OA is squarely covered by all these judgements. In view of this position, the present OA does not merit consideration and is liable to be dismissed.

9. For the reasons aforesaid, the present OA is devoid of merit and is accordingly dismissed. No costs.



(M.P. Singh)  
Member (A)



(Ashok Agarwal) -  
Chairman

/gtv/