

Central Administrative Tribunal
Principal Bench

(P)

O.A. No. 2450 of 1999

New Delhi, dated this the 22nd November, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

President & General Secretary
Scheduled Castes and
Scheduled Tribes Physical Education Teachers'
Welfare Association
Directorate of Education, NCT of Delhi,
103, Gali No. 2,
West Nathu Colony,
Shahdara, Delhi-110093. .. Applicants

(By Advocate: Shri K.P.Dohare)

Versus

1. Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg,
Delhi.
2. Secretary (Education),
NCT of Delhi,
Old Secretariat,
Delhi.
3. Director of Education,
NCT of Delhi,
Old Secretariat,
Delhi.
4. Union Public Service Commission
through the Secretary,
Shahjahan Road,
New Delhi.
5. Shri Sat Pal,
Assistant Director (Sports),
Dy. Director (on ad hoc),
Directorate of Education,
Delhi. .. Respondents

(By Advocate: Shri George Paracken,
Mrs. Avnish Ahlawat for R-5)

ORDER

S.R. ADIGE, VC (A)

In this amended O.A. applicants

- (i) impugn official respondents' order dated 26.9.2000 (Ann. R-9) promoting Shri Satpal to the post of Dy. Director Education (Sports);
- (ii) seek a direction to official respondents to fill up the aforesaid post as per law laid down in Y.V. Rangaiah Vs. J. Srinivas Rao AIR 1983 SC 852 and other cases; and
- (iii) to quash the amended Recruitment Rules of 5.6.97 (Ann. A-7), and to fill up the post of Dy. Director Education (Sports) by direct recruitment as per unamended Recruitment Rules by appointment of an SC candidate as per 40 point roster.

2. It is common ground that the post of Dy. Director Education (Sports) which was to be filled through direct recruitment as per Recruitment Rules of 1971 fell vacant on 31.12.93. Official respondents requested UPSC on 22.4.94 to fill up the aforesaid post according to Recruitment Rules of 1971. Meanwhile one Shri Satpal who had been appointed as Assistant Director Education (Sports) in 1983 was promoted to the aforesaid post of Dy. Director Education (Sports) w.e.f. 7.7.95 on purely ad hoc basis.

3. As official respondents were contemplating amendment of the Recruitment Rules to provide for promotional avenues for Assistant Director Education (Sports) to the post of Dy. Director Education (Sports), they decided to keep in abeyance the recruitment to the post of Dy. Director Education (Sports) through UPSC and requested UPSC accordingly vide letter dated 26.4.95, but despite that request, UPSC advertised that post in 'Employment News' dated 31.5.96.

4. Aggrieved by the same, Shri Satpal filed O.A.No. 1522/96 seeking quashing of the aforesaid advertisement, and an order restraining UPSC from filling up the aforesaid post of Dy. Director Education (Sports) till Government of NCT of Delhi made a specific request for filling up the said post, and meanwhile GNCT, Delhi be directed to complete the process of amendment of the RRs for the post of Dy. Director Education (Sports). Applicants in the present O.A. were allowed to be impleaded as intervenors in O.A. No. 1522/96.

5. After hearing the parties O.A. No. 1522/96 was disposed of by order dated 28.4.97 holding as under:

"In the premises the contentions of the learned counsel for the parties that the respondents have power to amend the recruitment rules is unassailable. But we make it clear that the filling up vacancies that arise prior to amendment, whatever be the nature of amendment that may take place subsequently, cannot govern filling up of the vacancies that arise after the amendment. The existing vacancy will have to be filled up in accordance with the rules in vogue from 1971 and since the said vacancy is said to be available to a reserved candidate, by amendment of rules respondents cannot dereserve the said vacancy, as discussed in the just preceding paras.

In the background of the circumstances aforementioned, the O.A. is disposed of with the direction that the respondents may amend the recruitment rules but that have only prospective application.

6. Against the aforesaid order dated 28.4.97 applicant Satpal filed CW No. 2257/97 and C.M. N. 4969/97 in Delhi High Court who disposed of the same vide its order dated 3.3.99. In that order, it noticed that by the Tribunal's order dated 28.4.97

relief (a) and (b) sought by applicant in O.A. No. 1522/96 i.e. quashing of the Employment News advertisement dated 25-31.5.96 and directions to UPSC not to fill the post till GNCT of Delhi made a specific request had been allowed. Furthermore during the pendency of the petition, GNCT of Delhi had amended the RRs and, thereupon as far ^{as} the prayer made by Shri Satpal were concerned they had been granted either by the impugned order by official respondents 1 and 2.

7. The Delhi High Court in its aforesaid order dated 3.3.93 noted further that Shri Satpal's only surviving grievance was that the Tribunal could not give directions which were not the subject matter of his case namely that

"filling up the vacancy that arose prior to amendment should not be filled by amended rules. That amendment cannot govern filling up of the vacancies that arise after amendment. That existing vacancy will have to be filled up in accordance with the rules in vogue from 1971, and since the vacancy is said to be available to a reserved candidate, by amendment of rules respondents cannot deserve the said vacancy. And further that the amended rules would have only prospective application."

8. The Delhi High Court held that these directions were neither warranted nor called for and the Tribunal exceeded its jurisdiction in giving such directions. As the amended rules were not under challenge, before the Tribunal, it could not direct that the same would have only prospective application, nor could it express the view that by amendment, the right of reservation had been taken away. Holding that such directions were unwarranted

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the High Court set aside the same and directed that appointment to the post of Dy. Director Education (Sports) be made in accordance with the law and rules governing the parties.

9. Admittedly applicants in the present O.A. were also a party before the Delhi High Court in CWP No. 2257/97 and C.M. No. 4969/97.

10. We have heard applicants' counsel Shri Dohare, counsel for official respondents Shri Paracken and Mrs. Avninish Ahlawat counsel for private respondent No. 5 Shri Satpal.

11. Shri Dohare has contended that as the vacancy of Dy. Director Education (Sports) arose on 31.12.93, it has to be filled up in accordance with the RRs as they stood prior to the amendments, that is according to the 1971 RRs, by which the post was to be filled through direct recruitment. He has also contended that as this post fell as a reserved point as per 40 point roster, it has to be filled up through direct recruitment by a reserved candidate. In this connection he has relied upon that portion of the Delhi High Court order dated 3.3.99 wherein it had been directed that the post should be filled up in accordance with the law and rules governing the parties and has relied upon certain rulings including Y.V. Rangaiah & Others Vs. T. Sreenivas Rao and Others AIR 1983 SC 852 to argue that a vacancy which occurred prior to the amended rules would be governed by the old rules and not by the amended rules.

12. We have considered the matter carefully.

13. In our considered view when the Delhi High Court in its order dated 3.3.99 has specifically set aside those directions of the Tribunal in its order dated 28.4.97 wherein respondents were directed to fill up the vacancy of the post of Dy. Director Education (Sports) in accordance with the 1971 RRs, and not in accordance with the amended RRs, as being unwarranted, it is not open for us to direct respondents to set aside the promotion already notified by order dated 26.9.2000 as per amended rules, and direct official respondents to fill up the aforesaid post as per unamended RRs. Any such direction will be clearly in breach of judicial discipline.

14. Under the circumstances, we dispose of this O.A. without recording any finding on merits, leaving it open to applicants to avail of such remedies as are available to them in accordance with law, if so advised.

A. Vedavalli
22/11/2001

(Dr. A. Vedavalli)
Member (J)

S.R. Adige
Vice Chairman (A)

Karthik