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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1338 of 1998

New Delhi, this the 19th day of May, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

Vipin Kumar, S/o Late Brahm Das, Adhoc
Substitute Language Teacher
(Sanskrit), Oak Grove School, Northern
Railway, Jharipani, Dehradun.

-APPLICANT

(By Advocate Shri H.K. Gangwani)

Versus

UNION OF INDIA AND OTHERS

Through

1. General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Chief Personnel Officer,
Northern Railway, Baroda House, New
Delhi.
3. The Principal Oak Grove School,
Jharipani, Dehradun.
4. The Chairman, Central Board of
Secondary Education, 2, Community
Centre, Preet Vihar, Delhi-110092. - RESPONDENTS

(By Advocate Shri R.L. Dhawan)

ORDER

By Mr. N. Sahu, Member(Admnv)

The applicant impugns the order dated 4.9.1997 issued on behalf of the General Manager by way of a reply to the General Secretary, URMU and prays for regularizing his services against the post of Language Teacher, Sanskrit and also seeks a direction not to abolish the said post. On admission there was an interim stay in favour of the applicant which is continuing till date.

[Signature]

2. The applicant was appointed on 9.5.1994 as a substitute Language Teacher in Sanskrit purely on adhoc basis against a short term vacancy. In the year 1996 the respondents decided to convert the post of Language Teacher Sanskrit Grade-Rs.1400-2600 into the post of Assistant Master (English) (TGT). The applicant had been teaching Sanskrit for Classes 6th to 8th. According to the respondents there are two permanent qualified teachers to teach Sanskrit. They found that this post was not essential to the requirement as Sanskrit was taught only up to Class 8th. They were of the view that this could very well be managed by the Hindi Teacher who is also MA in Sanskrit. Thus, they converted the post of Language Teacher Sanskrit into Assistant Master (English) and indent for the post of Assistant Master (English) had been placed before the Railway Recruitment Board (in short RRB) Allahabad by their letter dated 23.9.1996. They have specifically requested that no recruitment be made against the post of Language Teacher Sanskrit. According to the respondents the decision to convert the post into Assistant Master(English) was taken in June,1996 and the applicant's services were terminated with effect from 3.6.1996. It appears that when the school reopened the applicant requested for some job in the school. The Principal engaged him in the vacancy of House Keeper/ Dormitory Supervisor and thereafter the applicant had been working in that post.



3. The contention of the applicant is that he rendered 4 years continuous and satisfactory service. Refusal to regularize him in the post of Language Teacher Sanskrit is contrary to instructions of the Railway Board dated 18.6.1997 and 3.9.1997. He impugns the decision that it is not very essential to have a regular Language Teacher Sanskrit. It is stated to be in violation of the norms of Delhi School Education Act, 1973. The next point taken by the applicant's counsel is that in converting the post of Language Teacher Sanskrit into Assistant Master (English) the consent of the General Manager had not been taken. The applicant claims that he continues to teach Sanskrit and as there was shortage of hostel staff he was given additional charge of Dormitory Supervisor as also House Keeper.

4. Our attention has been drawn to Annexure-P1 dated 15.7.1998 in which respondent no.3 forwarded the application of the applicant addressed to the General Manager Personnel for regularizing his service as Language Teacher Sanskrit in Oak Grove School for sympathetic consideration. Our attention has also been drawn to Railway Board's letters dated 18.6.1997 & 3.9.97 which state that the services of substitute teachers who have put in three years of service should be regularized and in those proceedings the services of one Ms Manjeet Kaur had been regularized.

5. The following case law are relied upon by the applicant - (1) Jacob M. Puthuparambil Vs. Kerala Water Authority, SLR 1990 (6) SC 54; (2) SLR 1992(1) SC 643 Karnataka State Private College Stop Gap Lecturers Association Vs. State of Karnataka & others. In the first case the Hon'ble Supreme Court was dealing with the effect of Rule 9(a)(i) and sub clause (iii) thereof of the Kerala State and Subordinate Service Rules, 1958 and held that these are administrative rules and do not have statutory force. In the background of this legal position it held that if adhoc or stop gap arrangement continued for long, services of the incumbent has to be regularized provided he possesses the requisite qualifications prescribed in the rules. That case is totally different and distinguishable from the facts of the case we have to consider in this application. This decision does not deviate from the general rule laid down by the Supreme Court that regularization of service is not automatic but can be effected only on passing the necessary examinations and conforming to the rules as in the case of Mukesh Bhai Chhotabai Vs. Joint Agriculture and Marketing Advisor, AIR 1995 SC 413. The case of Karnataka State Private College Stop Gap Lecturers Association (supra), cited by the applicant does not also advance his case any further. That was a case in which the practice of adhoc appointment with one day's break in service and payment of salary which is less than the admissible amount has been deprecated and condemned.

6. The learned counsel for the respondents relied on an order of the Division Bench of this Tribunal in the case of Shri Anurag Semwal Vs. Union of India and others, OA No.1432/98 decided on 23.12.1998. He also placed the relevant records for our perusal.

7. We have carefully considered the submissions of rival counsel. The fact remains that the applicant was selected by an order dated 15.4.1994 as an adhoc Substitute Language Teacher for a short term vacancy. Subsequently, the respondents considered and decided to convert the post of Language Teacher Sanskrit into the post of Assistant Master (English) on the ground that there are qualified staff existing in the Hindi Language to teach Sanskrit and there is no need to have a permanent Sanskrit Teacher. It is also important to emphasize that in the advertisement for selection of a Sanskrit Teacher it was made clear that the selected candidate would not have any right to absorption as a permanent employee.

8. We have carefully seen the selection proceedings and we are satisfied that the applicant was only selected as a Sanskrit Teacher. The minutes show that the applicant is a graduate in Sanskrit and is a Acharya in Sarv Darshana, which is preeminently a Sanskrit qualification. His appointment, therefore, is primarily for Sanskrit as a substitute teacher though he was generally described as a Language Teacher.

9. The important question is as to whether the competent authority can decide to convert the post of a Sanskrit Teacher to that of an English Teacher. We have no hesitation in our mind that the competent authority can convert the post of Sanskrit Teacher into the post of English Teacher and the decision in this regard is entirely a decision which was taken by those who are entrusted with the running of the school, keeping in view the availability of senior teachers in Hindi who are equally qualified in Sanskrit. As Sanskrit was taught only to a limited number of students upto Class 8th, their decision to convert the post of Language Teacher Sanskrit into the post of Assistant Master (English) cannot be faulted by a Court.

10. It is important at this stage to examine the Railway Board's instructions in respect of regularization of substitute teachers. Annexure-A-6 is extracted in full as under -

Railway Board Letter No:
E(NG)II/96/RC-3/19 dated 18.6.97 regarding
regularization of substitute teachers
(Mussorie) working in Oak Grove School,
Jharipani (Mussorie).

As per extant instructions, the substitutes in Group 'C' are required to get selected through examination for direct recruitment conducted by RRB/Railways, for getting their services regularised. Further direct recruitment for category of teachers is to be made through examination conducted by Railways themselves.

In view of above Railway may consider the substitute teachers along with other eligible applicants in the selection for direct recruitment of teachers as and when held Railway and they apply against notification for the same.

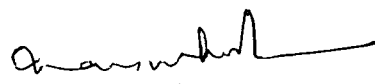
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Director Establishment(N)
Railway Board"


11. The above instructions show that regularization is to be preceded by a selection through an examination for a direct recruitment conducted by the RRB. These rules have statutory force and the respondents even if they wanted could not have regularized the services of the applicant. In accordance with the instructions extracted above, the applicant is at liberty to appear along with other eligible candidates in the selection for a direct recruit teacher as and when such an examination is notified. With regard to Annexure-A-7, Ms Manjeet Kaur was stated to be subjected to screening by a High Power Committee and this is also in accordance with the rules.

12. In Union of India and others Vs. K.G.Vyas, 1996 SCC (L&S) 468 the Apex Court held that regularization cannot be granted by disregarding appointment rules. In the case of Mukesh Bhai Chhotabhai (supra) the Apex Court laid down that a mere working in a post for a number of years on adhoc basis will not vest a person with the right to get regularized in a post which is meant to be filled up by regular recruitment under statutory rules.

13. We have held above that no Court or Tribunal can substitute the discretion of the competent authority to convert the post of a Language Teacher Sanskrit into the post of Assistant Master (English) as such a discretion is exercised purely on academic

grounds. Whether it is worthwhile keeping a wholetime Sanskrit teacher is purely an academic decision. The applicant having been selected only on adhoc basis and that too against a short term vacancy does not have any legal enforceable right to claim continuance much less regularization. That apart, as extracted above, substitute teachers having put in three years of service are to go through a selection process as prescribed either by the recruitment board or by a screening committee. The applicant can, if any such vacancy arises in Sanskrit, apply with others for such a selection. However, as the process of recruitment has already been initiated the applicant can be retained till a regular candidate is selected in accordance with the rules but beyond that he has no enforceable right either for continuation or for selection as Language Teacher Sanskrit. Since the applicant is being utilized by the respondents as a House Keeper/ Dormitory Supervisor, against the post of House Keeper in Oak Grove School, Jharipani, Dehradun for the last one year the respondents may consider his continuation in that post, after the regular incumbent to the post of Assistant Master (English) joins the organization. With these observations the OA is disposed of. No costs.


(N. Sahu)
Member(Admnv)


(Smt. Lakshmi Swaminathan)
Member(J)

rkv.