

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

(13)

OA No: 2274/97

New Delhi, this the 2nd day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)  
HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

In the matter of:

Ms. Nitika Garg  
A-8/15A, Rana Pratap Bagh,  
Delhi - 7.  
(By Advocate: Sh. V.K. Rao)

.... Applicant

Vs.

1. Government of N.C.T. of Delhi  
Through its Lt. Governor  
5, Sham Nath Marg,  
Delhi-54.

2. Director of Education,  
Old Secretariat Complex,  
Delhi - 54.

(By Advocate: Sh. Vijay Pandita)

.... Respondents

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

In this OA the applicant who was a candidate in the selection for the post of teacher in Delhi Administration has assailed the policy adopted by the respondents for recruitment to the post of trained graduate teacher/language teacher for which the applicant had applied. Describing the policy as unreasonable, malafide and unconstitutional the applicant has stated that the respondents could not have discriminated on the basis of sex by assessing the merit of male and female candidates under different standards.

2. The respondents issued an advertisement notice in the newspapers calling for applications for recruitment of TGT/LT. Males and females both were eligible. In the advertisement notice there was no

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mention of the fact that the respective merits of the candidates shall be assessed separately for males and females. But when the actual selection took place the candidates belonging to the two sexes were considered separately with the result that male candidate who secured only 39 marks was selected while the applicant who secured more marks could not make the grade as the cut off marks in case of female candidates was 52.

3. Although in the OA the applicant has pointed out some other alleged defects in the process of selection adopted by the respondents during the course of arguments, the learned counsel for the applicant laid emphasis on the above point and vehemently argued that if a male candidate securing as little as 39 marks can make the grade, there is no reason why applicant who had admittedly secured more marks could not be selected.

4. The respondents have contested the OA mainly on the ground that it has always been the practice adopted as a matter of policy by the respondents to make selection of male and female candidates separately as there are separate sanctioned posts for the two sexes. The respondents have taken the plea that such a policy cannot be assailed nor can a challenge to the policy be entertained by this Tribunal. According to the policy the merit lists are prepared separately for male and female candidates on the basis of the marks awarded as per the approved marking scheme and keeping in view the number of vacancies in both the categories separately.

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5. In the rejoinder to the counter of the respondents the applicant has assailed the classification on the basis of sex as unreasonable as, according to the applicant, it does not disclose any intelligible differentia nor any nexus between the classification and the object sought to be achieved. According to the learned counsel for the applicant such a policy is arbitrary and is violative of Article 14 of the Constitution.

6. We have heard the learned counsel for the parties. We have also examined the departmental records furnished by the learned counsel for the respondents.

7. Although, as already mentioned, there was no mention in the advertisement notice calling for applications that male and female candidates would be considered separately, we find on going through the departmental records that it has all along been the practice and policy of the respondents to consider male and female candidates separately. There seems to be a valid reason for it. The number of posts that exist are separately sanctioned and the vacancies under the heading 'males' and 'females' are also being shown separately in almost every selection. The learned counsel for the applicant has cited before us the judgment of Apex Court in **Govt. of A.P. vs. Vijay Kumar and Others**, AIR 1995 Supreme Court 1648. We have carefully gone through this judgment but are unable to find anything in it which would be relevant for adjudication of the controversy in the instant case. In the case before the apex court the question was whether reservation of posts for women was

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permissible and it was held that such a reservation was permissible under Article 15(3) of the Constitution and that the provision contained in Article 16 did not in any way whittle down the aforesaid power to make special provisions for women. In the instant case we are not concerned with the question of reservation. It would be interesting to note that before the Apex Court Rule 22-A of the A.P. State and Subordinate Service Rules was the subject matter of the dispute and in that rule there was a provision in the case of direct recruitment where men and women were found equally suitable and meritorious, a preference to the extent of 30% could be given to the candidates of the women's category, provided that the number of posts were limited and certain number of men and women candidates had obtained an equal number of marks but all of them could not be appointed. This provision in AP Rules was held to come within the ambit of Article 15 (3) and to be valid.

8. Another judgment relied upon by the learned counsel for the applicant is a Full Bench judgment of the **Punjab and Haryana High Court in Dr. M.C. Sharma Vs. Punjab University Chandigarh & Others**, reported in AIR 1997 Punjab and Haryana 87. In that case the Full Bench declared the rule providing that Principal of womens college shall be a lady as ultra vires of Articles 14, 15 & 16 of the Constitution. This judgment also is not of any use to the applicant in this OA. All that the judgment (supra) declares is that even a male can be appointed as a Principal of a Womens college.

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9. On the contrary we have a judgment of a coordinate bench of the Tribunal delivered in the case of **Jai Prakash and Others vs. Delhi Administration and Others** and reported as 1996 (1) SLJ (CAT) 545. That case also related to recruitment of teachers in Delhi Administration and the question in controversy was as to whether maintenance of separate cadres/seniority lists for male and female teachers of Delhi Administration was violative of Articles 14 & 16 of the Constitution of India. The Division Bench comprising Hon'ble Mr. S.R.Adige, Member (A), as he then was, and Hon'ble Dr. A.Vedavalli, Member (J) upheld the validity of such a practice. It was further held that the practice of having separate male/female teachers in Delhi was very old and there was nothing wrong in this. Disposing of two original applications by one common judgment, the Bench held that since there are separate schools for boys and girls run by the Delhi Administration the recruitment of teachers is validly made separately and even interviews are arranged separately for male and female candidages from time to time as per requirements of the Education Department. In that case as well in the advertisement notice there was no mention of the fact that male and female candidates would be considered separately or that separate cadres were being maintained for them. Repelling the contention of the applicants in the two OAs the Bench of the Tribunal held that the applicants had been duly considered on merits by the respondents but were not found fit for inclusion in the list, and that there was nothing wrong in the procedure adopted by the respondents. It was further held that the applicant in one of the OAs before that Bench could not justifiably seek her inclusion in the

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list of male teachers. In view of this clear pronouncement by a coordinate Bench this O.A. must ~~apply~~ must fail.

10. In view of the above, we find no merit in this OA which is accordingly dismissed but without any order as to costs.

~~R.K. Ahuja~~  
( R. K. AHOOJA )  
Member (A)

'sd'

~~T. N. Bhat~~  
( T. N. BHAT )  
Member (J)

~~2-7-98~~