

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 2142/94 with
~~XXXXXX~~ O.A. 1454/93

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DATE OF DECISION 31.8.1995.

Shri Jai Prakash / Shri Kiran Goenka Petitioner^s

Applicant in person

Advocate for the Petitioner(s)

Versus

Delhi Administration & Ors.

Respondent^s

Shri Arun Shardwaj

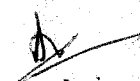
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. ADIGE Member(A)

The Hon'ble Mr. Dr. A. VEDAVALLI, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? -
2. To be referred to the Reporter or not ? **Yes.**
3. Whether their Lordships wish to see the fair copy of the Judgement ? -
4. Whether it needs to be circulated to other Benches of the Tribunal ? -


 (Dr. A. Vedavalli)
 Member(J)
 31.8.95.

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.2142/94
with
O.A.1454/93

New Delhi this the 31st day of August, 1995.

Hon'ble Shri S.R. Adige, Member (A)
Hon'ble Dr A. Vedavalli, Member (J)

O.A.No.2142/94

Jai Prakash
S/o Shri Sita Ram
R/o WZ-525, Mangal Raya,
New Delhi-110046 Applicant

(By : Applicant in Person, Shri Jai Prakash)

Versus

DELHI ADMINISTRATION, THROUGH

1. The Chief Secretary,
Delhi Administration,
5, Shyam Math Marg,
Delhi.
2. The Director of Education,
Directorate of Education,
Old Secretariat,
Delhi.
3. Vijay Laxmi Singh,
Govt Girls Sr. Sec. School,
M.B. Road, Saket,
New Delhi ... (Through Respondent No.2)
4. Dilbir Kaur Ahuja,
Govt Girls Sec. School.No.2,
Moti Nagar,
New Delhi ... (Through Respondent No.2)

(By Advocate : Shri Arun Bhardwaj)

O.A.1454/93

Kiran Goenka
W/o Shri U.B. Gupta,
R/o IV/1611, Bholu Nath Nagar,
Old Secretariat,
Delhi. Applicant

(By Advocate : Shri S.K. Gupta)

VERSUS

DELHI ADMINISTRATION, THROUGH

Contd.....



1. Chief Secretary
Old Secretariat,
Delhi.
2. Lt. Governor
Raj Niwas,
Delhi.
3. Directorate of Education, through
Director,
Delhi Administration,
Old Secretariat,
Delhi. Respondents

(By Advocate : Shri Girish Kathpalia)

ORDER

(Hon'ble Dr A. Vedavalli, Member (J))

As both the applications involve an identical question namely, the legality, constitutionality and validity of the maintenance of separate cadres for male and female teachers in the Delhi Administration by Respondent No.1 & 2, they are being disposed of by a common judgement.

2. In O.A. 2142/94, the applicant Shri Jai Prakash who was appointed as Trained Graduate Teacher (TGT) in the Office of the Respondents No.1 & 2 on 24.3.1977 is aggrieved by the omission of his name in the imougned Office Order dated 20.7.1994 relating to the adhoc ppromotion of the male and female teachers working in the TGT grade in different categories to the post of Postgraduate Teachers (PGT) -(Annexure A-1).



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3. The applicant in his O.A. has _____ submitted by _____ by that his seniority number is 36 (1975-80) and having joined on 24.3.1977, he is senior to Respondent No.3 & 4 who were promoted under the aforesaid order. They joined on 15.11.1985 & 20.11.1985 respectively. The other promoted female teachers who have joined in 1991, 1993 were also junior to him. Aggrieved by the aforesaid order he made a representation dated 27.7.1994 (Annexure A-2) to the Respondent No.1 & 2 objecting to the promotion given separately to the post of PGT and seeking his promotion according to his seniority. He submitted that he was not given any reply in writing to his representation. The grounds on which he has challenged the impugned order above mentioned are that;

(i) The DOPT instructions vide their Office Memo No.28036/8/87-Est. dated 30.3.1988 in regard to the adhoc promotion talk of seniority-cum-fitness being assessed on the basis of Confidential reports and not on the basis of male/female.

(ii) Discrimination on the basis of sex is violative of article 14 of the Constitution.

(iii) Reservation cannot be more than 50% in any way as per Supreme Court ruling.

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4. The applicant has sought the following reliefs in his O.A.;

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- (i) The quashing and setting aside of the impugned order dated 20.7.1994 and any other order by Directorate of Education, passed after 1991 for making adhoc promotion to the post of PGT (Physics) by female in so far as it relates to the applicant.
- (ii) Issue of an order/direction in the nature of writ of mandamus directing the respondents 1 & 2 to convene a review Departmental Promotion Committee as on back date and also to consider the applicant for promotion on adhoc basis to the post of PGT (Physics).
- (iii) Promote the applicant to the post of PGT(Physics) on adhoc basis as on the date when his immediate junior was promoted.
- (iv) Grant to the applicant arrears of salary and allowances as also seniority and other benefits.
- (v) Promote jointly male and female since 1.2.1990, under the single seniority list.

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5. The respondents in their reply read with additional affidavit filed by them have submitted that under the Directorate of Education, Delhi Administration, there are girls and boys schools. The recruitment of teachers, for male and female is made separately. Interviews are arranged separately for male and female candidates from time to time as per the requirement of the department. When the applicant was appointed as Trained Graduate Teacher, he was interviewed by the Staff Selection Board and the zone of consideration for selection was amongst the male candidates. No female candidate appeared in that interview. He was placed at Serial No.34 in the Selection List drawn up on the basis of merit assigned by the Staff Selection Board and in the said list there was no name of any female candidate. They have further submitted that as per the provisions of the Recruitment Rules, 75% posts are filled up by promotion and 25% by direct recruitment. For promotion, eligibility list for male and female category are drawn separately and subject-wise in accordance with the seniority in the Feeder cadre which are being maintained by the department separately for male and female category. Separate seniority list in the feeder cadre of trained graduate teachers are being maintained separately and on the basis of that seniority, promotions are made to the post of TGT from time to time. They have submitted that

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the adhoc promotion to PGT made in the impugned order are fully subject to the decision of the Supreme Court in CWP No.2824/84 which has been received now by them and the process of implementation of the judgement is being taken up. Moreover, there is no question of the applicant being senior to the female teachers as there are separate seniority lists for male/female and he can neither be senior or junior to female teachers as there is no connection between the two. As he was recruited in 1977, he was fully aware that the recruitment process for the male and female teachers was separate and the seniority lists were also separate. As the applicant himself has submitted that his seniority Number is 36, which is in the seniority list of T.G.T. (Male) he cannot feign ignorance of the maintenance of separate seniority list for male and female, in the feeder cadre. Further, there are other male teachers senior to him in the line of promotion to the post of TGT (Physics). The senior Male teachers who possess the qualifications for PGT (Physics) are to be promoted. No junior to the applicant in the male seniority list has been promoted. It was also stated that since 60s, male teachers are posted in boys schools and female teachers are posted at girls' schools as per the practice. The post of teachers in co-educational and composite schools as per practice is based upon number of male and female students of those schools and according to the demand made by the

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principals of the concerned schools. Though, there may be some cases of maladjustment due to human error in the matter of posting of male and female teachers.

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6. In his rejoinder, the applicant has generally denied the contents of the reply filed by the respondents and has reiterated his submissions made in the O.A.

7. We have heard the applicant in person, & Shri Arun Bhradwaj, the learned counsel for the respondents. We have perused the pleadings and the papers placed on record.

8. We have noticed that the impugned order dated 20.7.1994 (Annexure A-1) inter alia runs thus;

"The following teachers working in T.G.T. Grade in different categories in the pay scale of Rs.1400-2000 in the Directorate of Education are hereby promoted to the post of P.G.T. in the subject concerned in the pay scale of Rs.1640-2900 on purely adhoc and emergent basis for a period of six months or upto the date of DPC whichever is earlier. These promotion confer upon them, no right whatsoever, for regular promotion, seniority, confirmation etc in the PGT grade and the promotion of any of the following teachers is liable to be cancelled/withdrawn without prior notice. These promotions are fully subject to the decision of of the C.W.P.No.2824/84 pending in the Supreme Court of India and various other cases pending in the Courts of the CAT regarding promotion to the post of PGT. These promotions are further subject to the

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verification of the last five years' A.C.Rs of the promotees by the Dy Director of the district concerned. It is also subject to the condition that no vigilance case/departmental enquiry etc. is pending against the teacher concerned at any level. These promotions are valid till such time as regular candidates are available."

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9. It is apparent that the said promotions are purely adhoc for a period of six months or upto the date of DPC, whichever is earlier. Moreover, they are subject to the decision of the Supreme Court in CWP No.2824/84 which is stated to have been received by the respondents and is under the process of implementation. The applicant who was appointed as Trained Graduate Teacher in 1977 is fully aware since then that separate seniority lists for males and females are being maintained in the feeder cadre of TGT and the promotion to the TGT post of PGT were being made on that basis. He has not indicated satisfactorily as to why he has not challenged such maintenance of separate seniority list in all these years. Moreover, he has not established his right to be promoted to the post of Postgraduate Teacher since apparently there are number of Trained Graduate Teachers who are senior to him in the male seniority list in the feeder grade.

10. In the peculiar facts and circumstances of this case we are of the view that the applicant has not been able to establish

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the
 existence of any right to the post of there
 Postgraduate teacher as at present. Hence/ is no
 question of the violation of the rights of the
 applicant by the impugned order dated 20.7.94 and
 there is no justification for our interference
 with the said order. The application is,
 therefore, dismissed.

11. In O.A.No.1454/93, the applicant Smt
 Kiran Goenka is aggrieved by the action of the
 respondents in not giving her the offer of
 appointment to the post of Trained Graduate
 Teacher, (direct recruitment) in Delhi
 Administration though she was declared as
 qualified in the written examination and has
 challenged the maintainability of two separate
 cadres, for ladies and gents as being
 without any basis of law.

12. The advertisement issued by the
 respondent authorities dated 9.7.1990 inviting
 applications for recruitment to the posts of
 Assistant Teachers, Trained Graduate Teachers
 (TGT) and Postgraduate Teachers (PGT) is at
 Annexure A-1. The applicant's case is that she
 is fully qualified for the post of TGT and
 applied for the same in the subjects of Hindi and
 Sanskrit. She appeared in the written
 examination conducted by the respondents and was
 declared successful. Thereafter, she got a call
 letter from the respondents stating that she was

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provisionally qualified in the written test for the post of TGT and is required to contact personally the concerned authority on 1.8.1991 for verification of Original certificates/documents etc (vide Annexure A-3). The applicant submitted that she appeared before the said authority on that date and produced certificates etc and was told that her papers were found correct. But thereafter, no appointment letter was issued to her and she wrote two letters to Respondent No.3 for intimation in this regard, (Annexure A-5 Colly), and also made a detailed representation on 3.1.1992 - (Annexure A-6). She later on filed Civil Writ Petition in the Delhi High Court which subsequently was withdrawn by her. Thereafter, she filed the present O.A. A copy of the counter affidavit filed by the respondents in Delhi High Court has also been filed with this O.A. (Annexure A-7) as well as the supplementary affidavit (Annexure A-8). The main argument by the respondents in the said Counter affidavit as well as the reply filed in the present O.A. is that they have maintained two separate cadres i.e. one for male and the other for female, for recruitment to the post in question and the candidates securing maximum marks in female Cadre is 64% and the minimum is 54.5%, whereas in the list of male candidates the maximum marks secured were 63.4% and minimum 40%. As the name of the applicant was wrongly fed in the list of male persons in the computer, she was declared selected but, in

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fact, she secured only 43% marks. This fact came to the knowledge of the respondents when a clarification was sought from the computer agency.

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13. The applicant submitted in the O.A. that this maintenance of separate cadre for male and female has no basis in law and is against the recruitment rules for the post in question and is also violative of fundamental rights under the Constitution, namely, Article 15 and 16, as being on the basis of sex. There was no mention of such maintenance of cadres in the advertisements regarding the recruitment to the post and further a combined test was conducted by the respondents. Appointment of male candidate securing 40% while denying the same to the applicant who has secured 43%, is arbitrary. Hence, she prayed for the striking down of the action of the respondents.

14. In addition to the main ground mentioned earlier, the respondents in their reply to the O.A. have given further details as to how two separate cadres are being maintained regarding recruitment to the post of teachers in Delhi Administration. They have stated that prior to the enactment of Delhi School Education Act, 1973... Education Code which was repealed by Delhi Education Code was applicable to Schools for all purposes in the Union Territory of Delhi and a separate cadre of teachers i.e. male/female in each subject was being maintained

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from the very beginning i.e. even before independence, since, there were separate schools for boys/girls and the same practice is still being continued even under the Delhi Code. It was further submitted, inter alia, that special facility for female teachers with reference to relaxation in age for 10 years was not available to the male teachers. Moreover, female teachers get promotion ahead of male teachers because of the maintenance of separate cadre. Further the applicant is much junior on account of merit and if she is given appointment, it will result in ignoring hundreds of candidates in her own subject who are above her in merit and they will claim for appointment even if there is no vacancy.

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15. They have prayed for dismissal of O.A. with costs.

16. The applicant in her rejoinder has denied the contents of the reply filed by the respondents and has generally reiterated the grounds raised in the O.A.

17. We have heard the learned counsel Shri S.K. Gupta for the applicant and Shri Girish Kathpalia for the respondents.

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18. We have perused the pleadings and other papers based on record and have also gone through the various judgements of High Court and Supreme Court cited by the parties during the course of arguments.

19. The applicant in this O.A. has no doubt been informed by the authority that she has provisionally qualified the written test for the recruitment of TGT conducted by the Delhi Administration on 24.3.1991 (Vide Annexure A-3). However, it is well settled in law that the right to be considered for appointment to post under Government, no doubt may be a fundamental right guaranteed under the Constitution, but there is no fundamental right to be appointed to such a post. In the present case, it is apparent that the applicant has been considered on merits as per the rules in existence. It is not a question of non-consideration of the applicant for appointment to the post. It is due to a mistake that she was wrongly shown as a successful candidate in the list of male teachers. She was not found qualified for inclusion in the female teachers list. As the practice of maintenance of separate cadres/seniority list for male and female teachers was being followed by the respondents even, from the pre-independence day and she has been duly considered on merits by the respondents and found not fit for inclusion in the female list, the applicant, in our view is not

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justified in staking a claim for inclusion in the male teachers list taking advantage of mistake committed by the respondents. A mistake committed naturally can and ought to be rectified by the government to uphold the due process/ of law. Hence, the respondents action in not appointing the applicant to the post of in question cannot be faulted.

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20. In the above facts and circumstances of the case and since the applicant has not been able to establish any right enforceable under the law, the question of any violation of right, in our view would not arise. Hence, we are of the opinion that the impugned action of the respondents does not warrant any interference by this Tribunal. This O.A. is, therefore, dismissed.

21. Both the applications have been disposed of accordingly. No costs.

A. Vedavalli
31/8/95

(Dr A. Vedavalli)
Member (J)

S.R. Adige

(S.R. Adige)
Member (A)

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