

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

1. O.A.No.268/94
2. O.A.No.269/94

New Delhi this the 27th Day of December, 1994.

**HON'BLE MR JUSTICE S.K. DHAON, VICE CHIARMAN (J)
HON'BLE MR B.K. SINGH, MEMBER (A)**

1. Shri Guru Charan Sharma,
S/o Shri Harbans Lal Sharma
WZ-G-15, Mukhram Gardens,
Tilak Nagar,
New Delhi-110 018.
2. Shri Sadanand Ahuja,
S/o Shri Ramjidas Ahuja,
A-20, Manak Vihar,
New Delhi-110 018. ...Applicants

(By Advocate : Shri VSR Krishna)

VERSUS

DELHI ADMINISTRATION (GOVT OF NCT DELHI), THROUGH

1. Chief Secretary,
Delhi Administration,
5, Shyam Nath Marg,
Delhi.
2. The Director of Education,
Directorate of Education
Old Secretariat,
Delhi ...Respondents

(By Advocate : Shri Jog Singh)

JUDGEMENT

Mr B.K. Singh, Member (A)

These two applications No.268/94 and 269/94, have been filed by the applicants namely S/Shri Guru Charan Sharma and Sadanand Ahuja, against their non-promotions to the post of P.G.T. teacher (Physics) & (Commerce) respectively, by the DPC, convened

on 21.01.1992, 18.9.92 and 22.9.92, as also on 1.11.1993 and 16.11.93 on the ground, that the D.P.C. had been guided by irrelevant considerations. A true copy of the impugned orders dated 31.1.92, 16.10.92 and 10.12.93 bearing Office Order Nos 84, 150 and 60 respectively is annexed and marked as Annexure A-1 to the applications collectively.

2. Since the facts and legal issues involved in the O.A. are same, these are being clubbed together for final adjudication. The only difference between them is that one is a Trained Graduate Teacher in Physics and the other is a Trained Graduate Teacher in Commerce.

3. The material averments in the case of Shri Guru Charan Sharma who could not be promoted as Post Graduate Teacher in Physics are these. The applicant is qualified and possesses Master's degree in Physics and he is eligible for the post of Post Graduate Teacher in Physics. The D.P.C. met and promoted teachers in languages and in other subjects on the basis of the eligibility of the candidates. 184 male

teachers in various subjects and 166 women teachers were promoted from TGT to PGT. In Physics 16 male teachers were promoted from the post of TGT to the post of PGT and the applicant did not find a place in that. The similar was the case with Shri Sadanand Ahuja who had been working as a Teacher in Commerce and his name also did not find a place when the DPC was held to promote these people. The promotion though adhoc in the scale of Rs.1640-2900 is actually a regular promotion. This has been done on ad hoc basis due to the pendency of C.W.P. No. 2324/84 in the Hon'ble Supreme Court and in view of their direction not to promote people on a regular basis. Thus, the promotions have been made on ad hoc basis since 1984 although these are being made by a regularly constituted DPC against regular and permanent posts.

4. The main relief sought by the applicants in these two O.As are that the Tribunal should quash and set aside the recommendations of the Departmental Promotion Committee convened on 18.9.92, 22.9.92, 1.11.93 and

16.11.93 for making ad hoc promotions to
/Physics
the post of PGT Commerce and to issue
appropriate directions in the form of writ
of mandamus directing the respondents to
convene a review D.P.C. to promote these
two applicants to the post of PGT (Physics)
and PGT (Commerce) and to grant the applicants
all consequential benefits including arrears
of salary and allowances as also seniority.

5. A notice was issued to the respondents
who filed their reply contesting the applica-
tion and grant of reliefs prayed for.
We heard the learned counsel for the
parties, Shri VSR Krishna for the applicants
and Shri Jog Singh for the respondents.

6. The main thrust of the arguments
of the learned counsel for the applicants
was that the DPC which ~~met~~^{and} considered the
cases of the applicants on irrelevant
considerations such as the percentage of
passes, number of classes taken by them,
and that grave injustice has been caused
to the applicants by promoting their juniors.
The applicants filed representations protest-
ing against the denial of promotion to
them but of no avail. He repeatedly argued

that the members of the DPC were guided by irrelevant considerations in recommending the names of the promotees. The DPC should have confined itself to the Examination of the Confidential Reports of the applicants for 2 years and not for 5 years and then taken a decision whether the candidate is fit or unfit. He said that the only criteria that should have been adopted by the DPC was that of Seniority-cum-fitness and a senior teacher should not have been ignored and junior promoted to the post of PGT.

7. The learned counsel for the respondents argued that the promotion is a regular promotion though described adhoc on account of the stay granted by the Hon'ble Supreme Court. This is being called adhoc in the light of the directions of the Hon'ble Supreme Court in C.W.P.No.2324/84. He rebutted the arguments that the D.P.C. was guided by irrelevant considerations while recommending the promotions. A regular promotion as per recruitment rules is based on selection where merit takes precedence over seniority. The promotions being regular



the principle of seniority-cum-fitness is irrelevant.

A regular DPC met and considered the Confidential Remarks of the TGT teachers and adjudged their over all performance before recommending the promotions to the posts of PGT. It is purely a selection post and it is regular and permanent promotion, though described ad hoc on account of the directions of the Hon'ble Supreme Court. The DOPT Circular lays down clearly the "DPC is it's own master and it should follow within the ambit of the recruitment Rules." its' own criteria. However, the general instructions regarding the C.Rs have been issued by DOPT from time to time. These instructions are for purposes of guidance only. The learned counsel argued that the DPC has full discretion to examine ACRs and the results of classes taught by the applicants, (Both Board classes and other-wise) which form part of the ACR i.e. Column No.13 and 14. There are several other columns from 1 to 12 and these 13 & 14 alone do not constitute foundation of the assessment of the merit. These are only one or two elements in the over all assessment of the performance of the xx Trained Graduate Teachers aspiring for their promotion to the Post

of Post Graduate Teachers. He also rebutted the arguments of the learned counsel for the applicants that the applicants have been working in Juggi-jophri colony schools where the boys come from families belonging to the poorer sections of the society and their calibre cannot be compared with those being admitted in other schools. Secondly, he also rebutted the arguments regarding practice of favouritism in assigning VIIth and IXth classes to some, where results are hundred percent and entrusting 10th Class where the examination is conducted by the Board and the percentage of passes is far less. The learned counsel for the respondents rebutted the arguments that the calibre of the boys admitted in the Jhuggi Jhopri colonies is poorer as compared to the boys being admitted in other Higher Secondary Schools and that the teachers who are assessed on the basis of internal examination, are more advantaged where as those teaching 10th Classes are disadvantaged because the former are adjudged on the basis of internal examinations where results are hundred percent, where as the

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latter are adjudged on the basis of results of the Board examination where pass-percentage is poor. The arguments of the learned counsel for the applicants were rebutted by the learned counsel for the respondents by contending that the percentage of passes in regard to the internal examination/Board Examination is only one element while assessing the over-all performance of the candidates and as such this contention of the applicant's counsel is not tenable. We summoned the records pertaining to assessment made by the DPC and also relevant files dealing with the evaluation of C.Rs of eligible candidates.

8. A perusal of the records produced by the respondents clearly shows that the DPC was regularly constituted and promotion is a regular one. The candidates' C.Rs for 5 years have been seen in all cases although in some cases the remarks are missing for a year or two. But that alone will not vitiate proceedings of the D.P.C. These are just exceptions. Records also clearly prove that the DPC has been guided by over-all performance of each candidate in recommending promotion from TGT to the post of P.G.T. teacher in various

subjects. The members of the DPC consisted of Director (Education), Joint Secretary (services) and other experts, numbering 4 in all, and they have adjudged merit of each candidate separately and have made a unanimous recommendation after seeing the ACRs and adjudging over all performance of each candidate.

9. This court cannot sit as an Appellate Authority on the recommendations made by a regularly constituted DPC. The Hon'ble Supreme Court have categorically stated in a catena of judgements that High Courts and Tribunals should not disregard opinion of the Selection Committee. This norm was first laid down in University of Mysore Vs Govind Rao AIR 1965 S.C.C. 495.

10. The law has been laid down in State of Bihar Vs Asis Kumar Mukherjee (1975)3 SCC 602, further followed in case of M.L. Gupta Vs A.K. Gupta (1979) 2 SCC 239, Dalpat Singh Solunke Vs B.S. Mahajan (1990) AIR SC 434.

In all these cases it has been held that Courts cannot play the role of umpire in matters of

selection of candidates for various posts.

This is within the jurisdiction of the executive. Even if judges were angels they should fear to tread.. The Hon'ble Supreme Court have further held that if the right to appoint belonged to Government, the court could not usurp it merely because it would have chosen a different person as better qualified or given a finer gloss or different construction to the regulations or the set formula or criteria that relevant circumstances had been excluded, irrelevant factors had influenced and such like grounds familiarly invented by parties to invoke the extraordinary jurisdiction under article 226. The ~~xxx~~

administration should ^{not} be thwarted in the usual course of making appointments because some how it displeases judicial relish or the court does not agree with its' estimate of the relative worth of the candidates.

Likewise Hon'ble Mr Justice R.B. Mishra and Mr Justice Bhagwati observed as follows:-

"Be that as it may, it is not for the court to determine who is superior of the two candidates or who should be selected. It is for the authorities concerned to select from the available candidates." (B.S. Minian Vs Indian Statistical Institute (1994) 4 SCC 582)

11. The same view was further elaborated by the Hon'ble Supreme Court in the case of Parvez Qadir Vs Union of India (1975) 4 SCC 318.

"The past performance of an Officer being one of the criteria for making selection, the only way to adjudge their suitability is by perusal of the confidential records. The entries in the confidential records are themselves in-signia of the capacity and capability to judge the comparative merits of Officers."

12. Justice Bhagwati speaking on behalf of the 4 Membered Bench of the Hon'ble Supreme Court in Ashok Kumar Yadav Vs State of Haryana (1985) 4 SCC 417 held the same view. On a perusal of the record summoned and produced by the respondents we find that the decision of the respondents is based on an over-all assessment of the candidates who have been selected for promotion from the post of TGT to the post

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of PGT in the various subjects and we do not find any irregularity or illegality in this process of selection. The assessment is based on a comparative study of the ACRs of the various teachers and on the basis of the resume of the work submitted by them. On the basis of proforma of work submitted by the various TGT teachers, their work and performance has been compared and a view taken unanimously by a regularly constituted DPC. Their performance is also reflected in the ACRs which were also placed before the Committee. There is no illegality or irregularity observed in it, as such, it does not warrant any judicial interference by this court and accordingly the application is dismissed as devoid of merit or substance, leaving the parties to bear their own costs.

(B.K. SINGH)
MEMBER (A)

SSS

Original Copy in OA 268/4

(S.K. DHAON)
VICE CHAIRMAN (J)