CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(12)

NEW DELHI THIS THE 10TH FEBRUARY, 1995.

MR.JUSTICE S.K.DHAON,VICE-CHAIRMAN(J)
MR.B.K.SINGH,MEMBER(A)

(1) OA No.351/94

Smt.Anita Devi W/o Shri Ramesh Chand
TGT(Drawing)
Government Girls Senior Secondary School
Smalkha,New Delhi.
R/o F.1-305,Mahavir Enclave,Dabri Road,Palam,New Delhi. ... APPLICANT

BY ADVOCATE SHRI G.D.GUPTA.

vs.

1. The Government of Delhi
through its Secretary
Department of Education
Old Secretariat
Sham Nath Marg
Delhi.

2. The Director of Education
Delhi Administration,Delhi.

3. The Deputy Director of Education
District West
Karampura
New Delhi.

BY ADVOCATE SHRI SURAT SINGH.

(2) OA No.335/94

Ms.Anisha Nimesh
D/o Shri Om Parkash Nimesh
R/o C/848,Hastal Colony
Uttam Nagar
New Delhi. ... APPLICANT

BY ADVOCATE SHRI B.L.BABBAR.

VS.

1. The Chief Secretary
National Capital Territory of Delhi
5,Alipore Road, Delhi-110006.

2. The Director of Education
Delhi State
Old Secretariat,Delhi-110006.

3. The Dy.Director of Education
Distt.West, New Moti Nagar
New Delhi.

BY ADVOCATE SHRI ANOOP BAGAI.

ORDER(ORAL)

JUSTICE S.K.DHAON:

The controversy raised in these two applications is somewhat similar. They been heard together and, therefore, they are being disposed of by a common judgement/order.

2. In both the cases, the applicants had been appointed as T.G.T(Drawing). In both the cases, proceedings had been initiated for filling up the aforesaid posts in January, 1992. In both the cases, the letters of appointment were

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issued in March 1993. The applicant in OA No.351/94 joined as T.G.T(Drawing) on 2.4.1993 whereas the applicant in OA No.335/94 joined the service on 3.4.1993. On the same day, similar but different orders were passed purporting to exercise the power under sub-rule(1) of Rule 5 of the Central Civil Services(Temporary Services) Rules,1965(hereinafter referred to as the Rules) terminating the services of the applicants.

3. On the face of it, the orders do not disclose any reason for dispensing with the services of the applicants. However, they fully conform to the requirements of Rule 5 of the Rules.

4. It appears that the applicant in OA No.351/94 approached the Hon'ble Minister and he on 3.2.1994 passed the following order:

" Please give the letter of rejoining."

Keeping in view the said note of the Minister, this Tribunal on 22.2.1994 passed an order to the effect that if the above note of the Minister is correct, effect shall not be given to the impugned order of termination. That order continues to operate even today.

5. OA No.351/94 came up for consideration before this Tribunal. We passed several orders. The substance of the orders was that the Hon'ble Minister should be asked to explain as to under what circumstances,he passed the aforesaid order.

6. An affidavit has been filed by the Director of Education. In para 4 of the affidavit, it is stated that on 31.1.1995 the Hon'ble Minister gave a clarification as to what he intended to convey in his order dated 3.2.1994. The Minister has clarified that Smt.Anita Devi(applicant in OA No.351/94) misrepresented the case to him saying that whereas other candidates with the same qualifications were being retained, her services were terminated. The Minister further ordered that since it transpires that she is not

qualified, her case be decided as per rules. The Minister has also expressed a desire to reconsider her case in case she claims and it is proved that she has acquired the required qualifications.

7. In the companion OA(OA No.335/94), this Tribunal did not pass any interim order. However, it is stated at the Bar, and this fact is not controverted by the learned counsel for the respondents that, in spite of the impugned order of thermination, the applicant is continuing to perform the duties of a T.G.T(Drawing) even now.

8. In the counter-affidavits filed on behalf of the respondents, the reason given for passing the orders of termination is that the applicants were not qualified to be appointed as T.G.T(Drawing). In both the cases, the applicants are non-Graduate but are fit for consideration as they have attained the minimum academic qualification of having passed the Higher Secondary/Intermediate examination. The Rules framed under the provisio to Article 309 of the Constitution prescribe that the minimum qualification for appointment to the aforesaid post is Higher Secondary/ Intermediate. The further qualification to be fulfilled by him or her is that he should have a four years' diploma in Fine Arts etc. from a recognised University/ institution. It is an admitted position that both the applicants have a diploma but the duration of the diploma is three years and not four years. It is not disputed that the statutory Rules provide for such a qualification. However, the Rules also confer a power of relaxation in the case of T.G.T.(Drawing).

9. Shri G.D.Gupta, learned counsel for the applicant in OA No.351/94, has contended that the Rules are applicable to temporary posts or to those officiating in permanent posts. He urges that the post being permanent, the Rules are not applicable. In the OA, it has been asserted by the applicants that the post is permanent and this fact has

not been controverted in the counter-affidavits filed on behalf of the respondents. We need not enter into this controversy in these cases because we feel that these OAs can be disposed of on a short ground.

10. Admittedly, the applicants were not given any opportunity whatsoever before the passing of the impugned orders. According to respondents' own case, the reason for passing the orders is not that the work of the applicants was found to be unsatisfactory or they were not found suitable. The rason has been clearly set out i.e. the initial appointment of the applicants was irregular as they did not conform to the minimum requirement as laid down in the statutory Rules.

11. The learned counsel for the applicants has contended that in Delhi, there is no institution which imparts education for the purpose of giving a diploma in four years.It is urged that all the institutions in Delhi have three years' diploma and, therefore, the applicants have that diploma. It is also urged that in view of the facts and circumstances of the case, it should be assumed/presumed that the power of relaxation has been exercised in the cases of the applicants. According to the note of the Minister, it appears that he was inclined to take the view that the power of relaxation should be exercised. It is stated that after the filing of the OA No.351/94, the applicant in that OA acquired a degree.

12. Taking the overall picture into account, we feel that this is a fit case where we should interfere on the ground that there is a violation of the principles of natural justice. We, however, make clear that it will be open to the respondents to pass fresh orders on merits and in accordance with law after taking into account the facts and circumstances of the case and the observations made

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above.

13. The applications succeed and are allowed. The impugned orders are quashed. There shall be no order as to costs.

(B.K.SINGH)
MEMBER(A)

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

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