

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 463 OF 1994

(7)

New Delhi this 25th day of November 1994.

Hon'ble Shri S.K.Dhaon, Vice Chairman
Hon'ble Shri B.K.Singh, Member(A)

Smt Sunita
W/o Shri Mukesh Kumar
R/o House No.250, Gali No.13
Than Singh Nagar, Anand Parbat
New Delhi-110 005
(By Shri B.L.Babbar, Advocate)

....Applicant

Versus

National Capital Territory of Delhi
(through its Chief Secretary)
5, Sham Nath Marg, Delhi-110 006.

2. The Director of Education
Delhi State, Old Sectt.
Delhi-110 006.

3. The Dy. Director of Education
Distt. Contra, Bela Road, Darya Ganj
New Delhi-110 002.
(By Sh. Surat Singh, Advocate)

....Respondents

JUDGEMENT (Oral)

Hon'ble Shri S.K.Dhaon, Vice Chairman.

The termination order No. DE.51/DDE/C/A/94/1279 dated 14.2.94
issued by Deputy Director of Education in exercise of powers conferred
under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary
Services) Rules 1965 is being impugned in the present application.

2. A counter affidavit has been filed by the respondents and
rejoinder to it has been filed by the applicant. Though this OA has
not been formally admitted, yet we are disposing of the same with
the consent of the parties.

(SJK)

3. The respondents issued an advertisement in the daily newspaper for filling up the posts of Physical Education Teacher (PET). (S)

Written as well as practical examinations were held. The applicant was permitted to appear in written as well as practical examinations and she qualified the same. She was offered a job as Physical Education Teacher subject to satisfactory verification of her character and antecedents and medical fitness. Testimonials were duly verified by the officer of the department.

4. She was appointed as a Physical Education Teacher in Govt. Girls Senior Secondary School, Pataudi House, Darya Ganj, Delhi against a clear vacant post vide Respondent No.3's letter dated 28.4.93 (Annexure A-5). The offer of appointment clearly indicates that the said appointment was purely on temporary basis and was likely to become permanent. The offer of appointment did not confer any right upon her.

5. In the counter affidavit filed by the respondents, the reason for issuing such a termination order is that the applicant lacks essential qualifications and on account of a mistake of the computer, she was inadvertently given the appointment. Alongwith the counter affidavit filed by the respondents, photostat copies of General Instructions/eligibility criteria have been annexed. It is provided therein that a candidate should be a graduate from a recognised university and should possess a diploma in physical training from a recognised university or recognised institution. We are not concerned with the additional qualifications referred to in the instructions. Indisputably, the applicant did not and does not hold a diploma in physical training from a recognised university.

6. Para 4.4 of the OA states that the applicant has passed her BA examination from Delhi University in the year 1990 and holds a certificate in physical education from a government recognised institution having qualified in one year course in first class in

SJW

(9)

1987. She also holds a certificate in Yoga education. In the counter affidavit filed by the applicant, in reply to OA, it is avorred that the certificate is not the requirement as per recruitment rules. The applicant ought to have a diploma in physical training and a certificate is not equivalent to a diploma. So far as possessing a certificate in Yoga education is concerned, that is not the requirement as per rules.

7. To the counter affidavit, photocopy of the certificate in Physical education issued to the applicant is annexed. This is a certificate from the Dte. of Sports & Youth Services, Govt. of Maharashtra. The text of the certificate fully corroborates the averments made by the applicant in para 4.4 of the OA.

8. Having heard the matter at length, we have no hesitation in recording the finding that the respondents have failed to point out as to what is the qualitative difference between a diploma and a Physical Education Certificate, as held by the applicant.

9. We have perused the material on record and have come to the conclusion that the certificate held by the applicant in the present case is akin to a diploma, she could have obtained from a recognised institution. It is to be remembered that she is a lady teacher and the concerned authority should have applied its mind before issuing her a letter of appointment.

10. On the facts of it and in the facts and circumstances of the case, the exercise of power under Rule 5 aforementioned is arbitrary.

11. This application is allowed and the impugned order dated 14.2.94 is quashed.


(B.K. SINGH)
MEMBER(A)


(S.K. DHAON)
VICE CHAIRMAN