

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2708/2000

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T.A.No.

DATE OF DECISION 2-5-2001

Sh. Surender Singh

....Petitioner

Sh. V.S. Tomar

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT of Delhi through
the Secretary Directorate of
Education and Ors.

....Respondent

Mrs. Avnish Ahlawat, learned
counsel through proxy counsel
Shri Mohit Madan

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

(X)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2708/2000

New Delhi, this the 2nd day of May, 2001~

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Surender Singh
S/o Shri Kewal Singh
R/o.V.& P.O. Jharoda Kalan
Delhi - 110072.
Employed as TGT (PET) at
Govt. Boys Secondary School,
Inderpuri, New Delhi - 110012.

...Applicant.
(By Advocate : Shri V.S.Tomar)

V E R S U S

1. Govt of NCT of Delhi
Through its Secretary
Directorate of Education,
Govt. of NCT of Delhi
Old Secretariat, Delhi - 110054.
2. Director of Education
Govt. of NCT of Delhi
Old Secretariat, Delhi - 110054.
3. Deputy Director of Education
Distt. South West
C-4, Vasant Vihar, New Delhi. ...Respondents

(By Advocate Shri Mohit Madan, proxy counsel
for Mrs. Avnish Ahlawat)

O R D E R (ORAL)

By Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In this application, the applicant has impugned the validity of the Show-Cause notice issued by the respondent-3 dated 15-12-2000. By this order the respondents had directed the applicant to show cause as to why his services should not be terminated by the respondents for the reasons set out in the show cause notice.

2. We have heard Shri V.S.Tomar, learned counsel for the applicant and Shri Mohit Madan, learned proxy counsel for the respondents.

3. Learned counsel for the applicant has contended that the respondents cannot terminate the services of the applicant as Physical Education Teacher (for short PET) to which post they had appointed him after holding the selections in accordance with relevant rules by Memorandum dated 3-2-2000. Learned counsel has also submitted that inspite of the fact that the applicant had discharged his duties as PET with all satisfaction, after he assumed the post of PET the respondents, for no reasons, refused to pay him his salary for nearly ten months. He has submitted that it was only in pursuance of the Tribunal's order dated 29-12-2000 that the respondents paid the applicant his salary and allowances for the period he had worked. He has further submitted that they are not continuing to pay him the salary of PET.

4. The main issue raised in this OA, which is also referred to in the impugned show cause notice dated 18-12-2000 is that there can be no reservation for disabled persons, like the applicant, in either group 'A' or group 'B' post. Learned counsel for the applicant has himself stated that after the recommendations of the 5th Central Pay Commission have been accepted by the Government, post of TGT (PET) is a group 'B' post although prior to 1996, it was a group 'C' post. He has also submitted that within the period allotted to him in the show cause notice, the applicant has also given the reply to the respondents, but no decision has been taken by them so far or conveyed to the applicant. By Tribunal's interim order dated 29-12-2000, the respondents were

restrained not to dispense with the services of the applicant in terms of the show cause notice dated 20-12-2000.

5. Learned counsel for the applicant has contended that even in the case of group 'B' post reservation for disabled persons is applicable. He relies on the provisions of "Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation), Act, 1995, (Section 33). He has also submitted that all the grounds available to the applicant have been taken in the reply given by him to the respondents on which the decision is still awaited. He also relies on the DOPT OM dated 28-8-1998 on the subject of reservation to be maintained for each identified post filled through direct recruitment for physically handicapped persons in groups 'A' & 'B' posts/services. He has also relied on certain other rules and instructions which have been annexed with the OA.

6. The respondents in their reply have submitted that a person with a physical handicap cannot be given reservation for appointment to the post of TGT (PET) which is a post in category 'B'. They have also stated that only a simple show cause notice has been served upon the applicant wherein he had been asked to explain why his services should not be terminated as per the advise of the Chief Commissioner of Disability. Shri Mohit Madan, learned proxy counsel for the respondents has submitted that if the respondents are granted some time, they would

take an appropriate decision in the matter after looking into relevant the rules and law and pass a detailed and reasoned order.

7. We have considered the pleadings and the submissions made by the learned counsel for the parties.

8. It is relevant to note that whatever grounds have been taken by the respondents in their reply to substantiate their averments were well known to them even much before the applicant was appointed to the post of TGT (PET) vide memorandum dated 3-2-2000. It is also not denied that the applicant has satisfactorily discharged his duties as PET during the intervening period of more than one year, which fact should also be kept in mind by the respondents while dealing with the reply filed by him to the impugned show cause notice. We also find from the Govt. of India, DOPT OM dated 28-8-1998 that in pursuance of the provisions of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995, Government is ~~as~~ required to appoint persons with disability upto 3 %. This OM further provides for reservation for physical handicapped persons who have been identified in both groups "A" & "B" posts to be filled through direct recruitment.

9. Therefore, in the light of the above referred to OM, the contentions of the respondents that there can be no reservation for posts in group "B", cannot be accepted, particularly having regard to

the fact that the Selection Board (DSSSB) has recommended the applicant's name for appointing him to the post of TGT (PET) before the memorandum dated 3-2-2000 was issued. These facts are relevant in the facts and circumstances of the case.

10. The respondents, *inter alia*, have submitted that they have made a mistake in selecting of the applicant, which reason certainly needs to be looked into by them further. In the present case, we note that the applicant has been appointed to the post of TGT (PET) on the recommendations of DSSSB and has also discharged his duties in that post for more than ten months satisfactorily. In the facts and circumstances of the case, cost of Rs. 2000/- (Rupees two thousand only) is granted in favour of the applicant and against the respondents.

11. In view of what has been stated above, the OA is disposed of with the following directions to the respondents :-

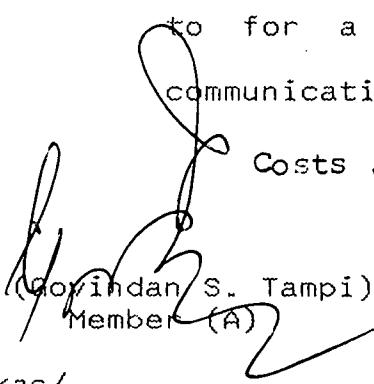
(1) To pass a detailed, reasoned and speaking order on the reply filed by the applicant to the show cause notice dated 18-12-2000. The respondents shall take into consideration the observations made above, as well as the relevant provisions of law rules and instructions relied upon by the applicant in the present OA and they shall also give a copy of the rules and instructions they rely upon in the aforesaid order. This

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shall be done within one month from the date of receipt of a copy of this order.

(2) In the particular facts and circumstances of the case, in case the respondents pass any order terminating the services of the applicant, the same will not be given effect to for a period of one month after its communication to the applicant.

Costs as in Para 10 above.


(Govindan S. Tampi)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

/vikas/