



CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.333/2000

New Delhi, this the 10th day of December, 2004

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Malhotra, Member (A)**

Sh. Virender Singh
S/o Sh. Lekh Raj Singh
R/o Kendriya Arya Yuvak Parishad
Arya Samaj, Kabir Basti
Old Subzi Mandi, Delhi – 110 007
Working as part-time (TGT)
Govt. Adult Secondary School
BT Block, Shalimar Bagh
Delhi – 110 052. Applicant

(By Advocate: Sh. Pankaj Kumar)

Versus

1. Govt. of N.C.T. of Delhi
Though its Chief Secretary
5, Sham Nath Marg
Delhi – 110 054.
2. Directorate of Education
Government of N.C.T. of Delhi
Old Secretariat, Delhi. Respondents

(By Advocate: Sh. George Paraken)

O R D E R

By Mr. Justice V.S.Aggarwal:

On 14.11.2002, the application filed by the present applicant had been dismissed. The applicant was seeking review of the said order contending that the fact recorded that he has chosen to withdraw his name from OA 1879/1994 was not correct. This fact had been checked. Resultantly on 29.10.2004, keeping in view the factual error that had crept in the order, we had recalled the earlier order dated 14.11.2002 passed by this Tribunal in this OA.

2. Applicant (Virender Singh) was employed as part-time Trained Graduate Teacher (for short 'TGT') with the respondents in





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the year 1991. Thereafter, he has been re-employed from time to time. He has been in continuous service since the first day he was taken as a part-time TGT except with notional breaks. By virtue of the present application, he seeks that a direction should be issued to the respondents to regularize his services as TGT and further he should be treated at par with other Teachers of the respondents.

3. The application is being contested. It has been pointed that on earlier occasion, the similarly situated persons had filed a petition and the Supreme Court in the case of **SUBHASH CHANDER SHARMA v. DIRECTORATE OF EDUCATION, CIVIL WRIT PETITION No.1350/90** had directed the respondents to consider those persons for regularization in the vacant posts of teacher after holding a suitable selection test. The applicant had not taken part in that test. It is contended that the availability of regular vacancy is not infinite and repeated holding of such selection tests excluding others from the open market is violative of Articles 14 and 16 of the Constitution.

4. We have heard the parties' counsel and have seen the relevant record. The sole contention raised at the bar was that as in the case of **Subhash Chander Sharma (supra)**, a separate selection test should also be held so far as the applicant is concerned.

5. In the case of **Subhash Chandra Sharma (supra)**, there were certain TGTs and the Supreme Court had directed:

“This is an application under Article 32 of the Constitution on behalf of some of the part-time teachers said to be 22 in all who have raised objections against their being continued as part-time teachers for more than 8 to 10 years. These teachers are of two categories- Trained Graduates and Post Graduates. After hearing Mr. Ramamurthi for the petitioners, we

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suggested to Mr. V.C. Mahajan for the respondents, that these teachers may be regularized and it is now agreed by counsel for both sides and we dispose of the Writ Petition with the following directions:-

- (1) Within three months hence, the respondent - Director of Education shall hold a selection test for these 22 teachers with a view to regularizing them.
- (2) The question of bar of age shall not be raised against them in view of the fact that they have been already in employment.
- (3) Those of them who are found successful at the selection test shall be forthwith-regularised and in regard to others, they may be continued in service provided there is temporary vacancy.”

6. Thereafter, certain other persons had also *claimed* for similar benefit in the case of **SATYENDRA KUMAR RANA & OTHERS v. GOVT. OF NCT OF DELHI & OTHERS**, O.A.No.1776/98, decided on 25.2.2003. A **Full Bench** of this Tribunal had been constituted to consider whether the decision rendered by the Supreme Court in the case of **Subhash Chandra Sharma** would apply to every person similarly situated as those applicants or it was confined to those petitioners only before the Supreme Court. This Tribunal held:

“15..... It is also relevant to note that the Hon'ble Supreme Court has in a number of Judgements deprecated the stand taken by the Government that unless parties approach the Courts/Tribunal each time they cannot be extended similar benefits. They have commented that the Government being a model employer, they should *suo moto* extend the same benefits as granted to similarly situated person and should not compel those persons to knock at the doors of the Courts to seek such benefits. Therefore, in the facts and circumstances of the case and having implemented similar orders of the Tribunal which are squarely based on the Judgement of the Hon'ble Supreme Court in Subhash Chandra

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Sharma's case (supra), we see no reason why the same benefits ought not to be extended to the applicants who are similarly situated, i.e., those who have been employed by the respondents themselves as Part-Time Teachers in the Adult Education School."

The answer was given in the affirmative.

7. It is these binding decisions that are being pressed and, therefore, necessarily, we have no option but to hold that the applicant is entitled for regularization after taking a selection test.

8. The short question thus which remains to be considered is as to whether such a separate test should be held for every such individual who seeks regularization subsequently. In our opinion, it would not be proper to do so. This Tribunal in the case of **SHRI BHOO DEV SHARMA v. LT. GOVERNOR, GOVT. OF NCT OF DELHI & ANR.**, OA 2407/97, decided on 10.9.1999 had considered this question and held:

"5. It must be remembered that the availability of regular vacancies in TGT/PGT is not infinite and the repeated holding of such selection tests exclusively for part time teachers such as applicants, and excluding others from the open market aspiring for appointment as TGT/PGTs, besides reducing the availability of vacancies is itself violative of the principle of equality enshrined in Articles 14 and 16 of the Constitution.

6. The OA is therefore disposed of giving liberty to applicants to apply for regularization at the time regular selections are held by respondents. At that point of time, if the rules and instructions permit age relaxation, it will be open to respondents to consider granting the same having regard to the length of service put in by applicants as part time teachers."

9. The same was the position as considered by this Tribunal in the case of **GOVT. ADULT SCHOOLS, PART-TIME TEACHERS ASSOCIATION & ANR., v. THE DIRECTOR OF EDUCATION, DIRECTORATE OF EDUCATION & OTHERS**, OA No.1879/94,

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decided on 31.1.1997. We find ourselves in ~~respectful~~ agreement with that view. Following the dicta of **Subhash Chandra Sharma(supra)**, necessarily the applicant is entitled for regularization on his taking a test but his claim has to be considered in the vacant post of Teachers after holding a suitable selection test as has been held in other cases with relaxation, if necessary. The applicant should not be discriminated.

10. Consequently, we dispose of the present application directing that the applicant may apply for regularization at the time whenever regular selection is to be held. At that point of time, after age relaxation, it would be open to the respondents to consider the applicant for regularization when the suitable test is held. This is subject to the availability of a regular vacancy.

Malhotra
(S.K. Malhotra)

Member (A)

Aggarwal
(V.S. Aggarwal)

Chairman

/NSN/