

Central Administrative Tribunal
Principal Bench

O.A. No. 800 of 2000

New Delhi, dated this the 1st JANUARY
December, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Mrs. Saraswati,
W/o Shri N.K. Kashyap,
B-86, Nanakpura,
(South Motibagh),
New Delhi.

.. Applicant

(By Advocate: Shri L.R. Khatana)

Versus

1. Director of Education,
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariat,
Delhi-110054.
2. Joint Director of Education (A),
Govt. of NCT of Delhi,
Directorate of Education,
Old Secretariat,
Delhi-110054.
3. Delhi Subordinate Services
Selection Board (through its Secretary),
UTCS Building,
Behind Karkardooma Courts Complex,
Vishwas Nagar,
Shahdara,
Delhi-110032. .. Respondents

(By Advocate: Shri Ashwini Bhardwaj
proxy counsel for Shri Rajan Sharma)

ORDER

MR. S.R. ADIGE, VC (A)

Applicant impugns respondents' Memo dated 29.2.2000 (Annexure 1) regretting their inability to appoint her as Music Teacher.

2. By DP&T's O.M. dated 24.7.98 (reproduced at pages 373-374 of Swamy's Compendium on Establishment and Administration) (copy taken on record) it was clarified that Section 33 of Persons

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with Disabilities (Equal Opportunities etc.) Act 1995 provides that Government shall appoint in every establishment, such percentage of vacancies not less than 3% for persons or classes of persons with disability of which 1% each would be reserved for persons suffering from

- (i) Blindness or low vision
- (ii) Hearing impairment
- (iii) Locomotor disability or cerebral palsy

in the posts identified for each disability with the enactment of this law, the reservation of physically handicapped which earlier were limited to Group C and D posts through direct recruitment, stood extended to identified Group A posts.

3. In 1986 itself the Narasimhan Committee had identified the post of Music teacher as most suitable for blind person out of the categories of Drawing, Domestic Science, Physical Education and Music Teacher.

4. By respondents' letter dated 8.1.99 (Annexure R-1) a requisition was sent to the Delhi Subordinate Services Selection Board for 26 posts of TGT (Music) which is a Group B post whose break up was as follows:

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	UR	SC	ST	OBC	Total
New Vacancies	9	2	1	4	16
Backlog (10)	-	-	5	5	10
Total	9	2	6	9	26

5. Upon receipt of a representation from the Blind Association respondents in their letter dated 4.5.99 (Annexure R-2) addressed to the Chief Commissioner, Disabilities stated that they had notified the following vacancies of teachers to DSS Board for recruitment.

	No. of vacancies	Pay scale
1. P.E.T.	126	Rs.500-900 (Group B)
2. Domestic Sceince Teacher	67	-do-
3. Drawing Teacher	118	-do-
4. Music Teacher	18	-do-
Total	327	

In this letter it was stated that as reservation to Physically Handicapped (PH) was to be 3%, the reservation for this category came to 10 on the above 327 ^{posts} ~~postholders~~. It was pointed out that the cadre and seniority list of all these posts were separate. The representation of the Blind Association was referred to, wherein they had sought 1 1/2% reservation of the

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total above posts to be given to them against Music Teacher category alone, and a clarification was sought whether 1 1/2% of the total reservation for PH could be given to blind in Music Teacher category, when the cadre and seniority list of all these posts were separate.

6. The office of Chief Commissioner, Disabilities in their reply dated 24.5.99 (Annexure R-3) intimated that since out of the different categories of teaching posts, only one, namely that of Music teachers had been identified as suitable for the blind by the Narasimhan Committee, 1988, and since there were 16 vacancies of Music teachers, 1 1/2% of the vacancies, which amounted to five vacancies of Music Teachers could be filled by blind candidates.

7. Accordingly respondents intimated to the DSSS Board vide letter dated 13.9.99 (Annexure R-4) that as 3% reservation for PH category had to be provided in all categories of teachers viz. Domestic Science, Music, P.E.T. and Drawing and on a total of 327 vacancies, 16 vacancies had to be reserved for PH category, it had been decided to reserve 1 1/2% new vacancies i.e. 5 posts for blind persons and OH persons in Music Teacher category; and the balance 1 1/2% vacancies i.e. 5 posts in the remaining three categories i.e. drawing, PETs and Domestic Science.

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This reservation excluded the backlog of 1 post in PETs and four posts of P.H. in drawing. Hence the total reservation of P.H. would be 5 in Music for blind and OH, and 10 in OH for the remaining three categories (other than blind).

8. The DSSS Board held the TGT Examination on 22.9.1999 and sent merit list of 26 candidates for the post of TGT (Music) (Annexure 3). Applicant's position was at Sl. No. 7 out of the 9 candidates selected in UR (Unreserved) category. However only the first four in order of merit amongst the 9 candidates in UR category were issued appointment letters and the remaining five vacancies were allocated to five visually handicapped candidates. As applicant's position was at Sl. No. 7 she could not be appointed, and it is this which has been challenged in the present O.A.

9. We have heard both sides.

10. Applicant's counsel Shri Khatana have asserted that as the advertisement did not make any mention of reservation for PH persons, the same could not have been introduced subsequently. He has also contended that the recommendations of the Narasimhan Committee 1986 in regard to posts of Music Teacher being suitable for reservation for visually handicapped persons was made in the context of

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reservations for physically handicapped persons being provided in Group C and D posts and was not relevant in the present context when reservation for physically handicapped persons had been extended to Group A and B posts. It was also contended by him that DP&T's O.M. dated 24.7.98 envisaged the setting up of a Committee to identify posts for different categories of P.H. persons and till that Committee gave its recommendations, vacancies in particular categories could not be reserved for visually handicapped persons. An attempt was also made to argue that by this reservation, respondents may have exceeded the 50% quota for reservation for all categories on post based roster laid down by the Hon'ble Supreme Court in Sabharwal's case.

11. We have considered these contentions carefully. Reservation of posts for persons with disabilities has been introduced by an Act of Parliament, and even if the initial advertisement did not mention the same, respondents cannot be faulted for having provided for reservation for P.H. persons when they made the recruitment. Indeed if they had not done so, their inaction would have been violative of an Act of Parliament. The Narasimhan Committee gave its recommendations in 1986 when reservations were confined only to direct recruitment to Group C and D posts. It recommended that the category of Music teachers was suitable for reservation for

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visually handicapped persons. The fact that reservation in direct recruitment has now been extended to Group B and A posts and the category of Music Teacher falls in Group B posts would make no difference as far as the recommendations of the Narasimhan Committee are concerned. Nor is it necessary to await the recommendations of the Expert Committee before implementing the provisions of the Persons with Disabilities Act. Furthermore no materials were furnished by applicant to lead us to conclude *prima facie* that the provision of reservation to the P.H. persons in the impugned recruitment of TGTs would lead to the 50% reservation quota being exceeded. Indeed such a situation would not happen, because the reservation in P.H. category is horizontal reservation, and the persons selected in P.H. would utilise the post of the category to which they belonged. For example a P.H. Scheduled Caste would utilise the post in S.C. category and a P.H. General would utilise the post in General category as has happened in the present case.

12. We also note that applicant is No. 7 in order of merit in the 9 vacancies falling under U.R. category. Four candidates (including 1 OBC candidate) have been selected and appointed in order of merit against four U.R. vacancies, and the other 5 vacancies, as noticed above have gone to visually handicapped candidates. There are atleast two

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candidates in U.R. category whose claim to be appointed as Music Teacher, if at all, is superior to that applicant.

13. In the result the O.A. warrants no interference. It is dismissed. No costs.



(Dr. A. Vedavalli)
Member (J)



(S.R. Adige)
Vice Chairman (A)

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