

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn No. OA 862/89

Date of decision: 6.10.1989.

Shri N.K. Verma

.....Applicant

Vs.

Delhi Administration & Another

.....Respondents

For the Applicant

.....Shri J.P. Verghese,
Counsel

For the Respondents

.....Shri M.M. Sudan,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN (J)

THE HON'BLE MR. P.C. JAIN, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporters or not? No

(The judgment of the Bench delivered by
Hon'ble Mr. P.K. Kartha, Vice Chairman (J))

The applicant while working as Post-Graduate Teacher (PGT for short) in G.B.S.S. School, Begumpur filed this application under Section 19 of the Administrative Tribunal's Act, 1985 challenging his reversion from the post of PGT to the post of TGT vide impugned order dated 21.4.1989. The application was filed on 24th April, 1989. On the same date, an interim order was passed to the effect that the impugned order of reversion shall not be given effect to. The said order has been extended until further orders.

2. The pleadings in the case are complete. After going through the records and hearing the learned counsel of

both parties, we feel that the case could be disposed of at the admission stage.

3. There is no dispute between the parties as regards the facts of the case. Promotion from the post of TGT to that of PGT is made annually on the basis of eligibility list prepared for the purpose. Candidates desirous of applying for inclusion in the eligibility list have to do so in the prescribed proforma. According to the Recruitment Rules, the qualification prescribed for promotion from the post of TGT to that of PGT is that the candidate should have acquired the prescribed qualifications on or before 30.4.1988 for inclusion of his name in the eligibility list of 1988-89. The prescribed qualification is a Masters Degree in the subject concerned from a recognised University.

4. The applicant applied for inclusion of his name in the eligibility list wherein he stated that he acquired Post-Graduate qualification in December 1987. In view of this, the respondents vide Office Order dated 27.2.1989 promoted him to the post of PGT. Subsequently, they came to know that he did not acquire Post-Graduate qualification in December 1987 as claimed by him. He had only appeared in the Examination in December 1987 at the Annamalai University. A provisional certificate was issued to him on 18.7.1988 to the effect that he has passed the M.Sc Degree Examination. His result was declared also on that date.

5. The only ground on which the respondents have sought to justify the impugned order of reversion is that the applicant's name was included in the eligibility list erroneously on the basis of the particulars furnished by him and that in fact

he did not acquire Post-Graduate qualification on or before 30.4.88.

6. The applicant has challenged the impugned order of reversion on the ground that it was passed without assigning any reason and that no show cause notice was given to him before it was passed. He has also challenged the legality of fixing 30.4.88 as the cut-off date for acquiring the prescribed qualifications. He has further alleged that the respondents themselves have appointed persons as PGTs in whose case the results had not been declared before their names were included in the eligibility list. In this context, he has referred to the cases of Smt. Sheila Baxi of GGSSS, Andrews Ganj and Mrs. Sandip Kaur.

7. The sole issue for adjudication relates to the validity of the Recruitment Rules stipulating that the candidate should have acquired the prescribed qualification on or before 30.4.88. According to the applicant, there is no rational basis for fixing the said date. On the other hand, the respondents have sought to justify the validity of the same on the ground that this crucial date is always fixed at 30th April, which is the last date of every academic year in the Directorate of Education under the Delhi Administration. The eligibility list prepared is valid for that particular academic year and lapses on the next 30th April. They have also stated that no irreparable loss or injury has been caused to the applicant as a result of his reversion and he will be promoted according to his seniority in the next academic year (1989-90).

8. In our opinion, the fixing of 30.4.88 as the crucial date for acquiring the prescribed qualification cannot be said to be irrational or unreasonable as the academic session ends on that date. The eligibility of all candidates is judged by the same criterion as laid down in the Recruitment Rules (vide Dr. Ganga Dhar Swain Vs. Orissa Public Service Commission, ATR 1987 OAT 630). We are, therefore, not impressed by the contention of the applicant that the cut-off date has been fixed in the Recruitment ^{Rules} in an arbitrary manner.

9. We are also not convinced that in a case of this kind, the applicant should have been ^{given} a show cause notice or that they should have assigned any reasons before the impugned order of reversion was passed. After a person is appointed contrary to the Recruitment Rules and subsequently reverted when the mistake is detected, no show cause notice is required to be given for correcting the mistake. In such cases, the provisions of Article 311 of the Constitution would not also apply (Vide M. Narayanan & Others Vs. U.O.I. & Others, ATR 1986 CAT 130).

10. The allegation of the applicant that some other TGTs were appointed as PGTs in circumstances similar to that of the applicant has been raised for the first time in the rejoinder-affidavit. The facts and circumstances of the other cases are not before us. In any event, we are of the opinion that any appointment contrary to the Recruitment Rules cannot be said

to be valid. We are not required to adjudicate upon the validity of similar appointments made by the respondents in the present proceedings.

11. It is, however, noticed that the applicant submitted his application for inclusion in the eligibility list on 5.8.88 and the respondents had ample time till February 1989 to verify whether he in fact had acquired the requisite qualifications in December 1987. There is no indication in the records as to why this was not done by them during the said period. In view of this, the plea of the respondents that the applicant misled them or that he indulged in "foul practice" cannot be accepted.

12. In the facts and circumstances of the case we are of the opinion that the impugned order of reversion dated 21.4.1989 cannot be faulted. However, in the interest of justice and equity, we hold that the respondents shall not effect any recovery from the salary of the applicant consequent upon his reversion from the post of PGT to TGT w.e.f. 27.2.1989, as has been sought in the Office Order dated 21.4.1989.

13. The application is disposed of on the above lines at the admission stage itself. The parties will bear their own costs.

(L.S.
6/10/89)
(P.C. JAIN)
MEMBER (A)

General
6/10/89
(P.K. KARTHA)
VICE CHAIRMAN (J)