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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.2094/91

New Delhi this the 10th Day of January, 1996.

Hon'ble Sh. N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Smt. Sunita Mittal,
W/o Brijesh Kumar,
House No.464,
Gali Arya Samaj,
Najafgarh,
New Delhi-110043.

...Applicant

(By Advocate Sh. M.M. Sudan)

Versus

1. Delhi Administration
through Chief Secretary,
5-Sham Nath Marg, Delhi.
2. Director of Education,
Delhi Administration,
Old Secretariat,
Delhi.

...Respondents

(By Advocate Sh. Jog Singh, though none appeared)

ORDER (Oral)
(Hon'ble Mr. N.V. Krishnan, Acting Chairman)

The applicant is aggrieved by the fact that she has not been selected as a Teacher in pursuance of the recruitment made as notified by the Annexure A-2, on the ground that certain persons have been given additional marks unauthorisedly, as a result of which they have scored higher positions in the merit list and have been appointed.

2. An advertisement was issued for the recruitment of Teachers in the Delhi Administration (Annexure A-2). The advertisement also indicated the scheme of the examination. According to the scheme there were to be three papers, the maximum marks being 10, 25 and 50, totalling 85. According to the applicant, the merit list should have been prepared on the basis of the marks scored in these three papers on

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a maximum 85 marks. The applicant has also filed a copy of the recruitment rules, which appears to be a schedule to the recruitment rules (Annexure A-1).

3. The applicant alleges that contrary to the scheme of the examination, as mentioned in the advertisement and the provisions in the recruitment rules five additional marks have been awarded to those who appeared in the examination but also happened to be the children of Teachers. Likewise, 10 additional marks were given to those examinees who had earlier experience as Teacher. If these additional marks had not been given, the applicant would have been in the merit list on the basis of the marks scored by her out of the maximum 85 marks.

4. The respondents have filed a reply, contesting these allegations. It is stated that the five marks to wards of Teachers and 10 marks to candidates having experience of teaching "have been granted as per the marking scheme/policy approved by the Delhi Administration, Delhi." In reply to ground (b) the respondents specifically deny that the recruitment rules do not provide for the grant of five marks to the children of Teachers working in the Directorate of Education. This contention is also reiterated in reply to grounds (d) and (e) wherein it is stated that the recruitment rules provide for awarding such marks. The respondents, however, have not made any averment that the Annexure A-1 rules, produced by the applicant, is not a genuine document

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nor have they on their own produced their own set of recruitment rules showing that grant of such marks is permissible.

5. We have heard the learned counsel for the applicant, who alone is present. He pointed out that awarding of such marks is neither provided for in the advertisement nor is it contained in the recruitment rules. He draws our attention to the reply of the respondents to grounds (d) and (e) in which they have stated that the recruitment rules lay down the condition for eligibility in respect of age, qualification etc. whereas marking scheme policy is an administrative matter to be decided by the competent authority. He points out that this stand totally contradicts the other submissions made that the recruitment rules do provide for awarding of such marks.

6. He has also drawn our attention to the decision of the Supreme Court in 1987 (3) ATC SC 28 - Joginder Pal Singh vs. Union of India in which a provision of the Punjab Police Rules, as applicable to Delhi Police which granted certain preferential treatment to wards of the Delhi Police for recruitment had been held to be void.

7. We have carefully considered the matter. The respondents have not produced any authority for awarding five marks for the wards of Teachers and 10 marks for experience. The learned counsel has a point that the scheme of examination should have disclosed

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the entire scheme of valuation instead of merely giving publicity to certain aspects of it and withholding certain other aspects of valuation.

8. We notice that at the time of admission of this OA a direction had been given to keep one post of TGT unfilled out of the posts advertised and results declared on 29.7.91. This order is still in force.

9. We are of the view that for the purpose of deciding this OA it is not necessary for us to strike down the merit list, as prayed for. The applicant has a case that her merit should be determined vis-a-vis the others only on the basis of the marks scored out of the 85 marks notified. We find merit in this submission, particularly in view of the fact that the advertisement does not refer to any other scheme of valuation. While, therefore, we do not want to quash the results, as prayed for by the applicant on the ground that the respondents have awarded 5 marks for children of Teachers and 10 marks for experience as Teacher by the candidates, we are of the view that for a proper assessment of the applicant's merit vis-a-vis others only the marks scored out of 85 marks, as announced in the advertisement should have been taken into account. We, therefore, direct the respondents to reconsider the case of the applicant by comparing her marks with those of others who have been given the additional marks on one or both of the two grounds mentioned above. In case any such person has been given

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appointment as a Teacher and it is also found that the marks scored by that person out of the 85 marks mentioned in the advertisement is less than the marks scored by the applicant, the applicant shall be appointed as TGT to the one post, which we had directed to be kept vacant, subject to satisfying other formalities before such appointment. This shall be done within a period of two months from the date of receipt of this order. The appointment will be effective only from the date it is granted. It is open to the applicant to seek seniority separately. We also make it clear that this order shall benefit the applicant only, who alone has come up with this grievance.

10. The O.A. is disposed of with the above directions with no order as to costs.

Lakshmi

(Smt. Lakshmi Swaminathan)
Member (J)

'Sanju'

N.V. Krishnan

(N.V. Krishnan)
Acting Chairman