

Central Administrative Tribunal, Principal Bench

O.A. No. 2257/2004

New Delhi this the 26 day of May, 2005

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Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)
Hon'ble Mr. S.K. Naik, Member (A)

Mrs. Archana Bajaj
W/o Shri Depak Bajaj
Aged about 55 years
R/o 9A/44, W.E.A. Karol Bagh,
New Delhi-110005.

And Employed as

Lecturer (Selection Grade)
In Meera Bai Ploytechnic,
Maharani Bagh,
New Delhi
(Presently acting as Head of the
Department, Commercial Art)

...Applicant

By Advocate: Shri B.B. Raval.

Versus

1. Government of NCT of Delhi
Through: The Chief Secretary,
Old Secretariat,
Rajpur Road,
Delhi-110 006.
2. The Director,
Directorate of Training and Technical Education,
Government of NCT of Delhi,
Muni Maya Ram Marg,
Pitam Pura,
Delhi-110 085.
3. The Chairman,
Union Public Service Commission,
Dholpur House,
Shah Jahan Road, New Delhi-110011.

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4. The Principal,
Meera Bai Polytechnic
Maharani Bagh,
New Delhi-110065.Respondents

By Advocate: Shri Ajesh Luthra, Counsel for respondent Nos. 1, 2 and 4.

Shri Ashish Nischal, proxy for Shri Rajinder Nischal, Counsel
For respondent No.3.

ORDER

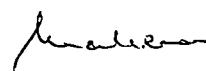
Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The applicant has filed this OA for quashing the amended Recruitment Rules for the post of Head of the Department, Commercial Art (CA) as being violative of fundamental rights of the applicant enshrined in Articles 14, 16 and 21 of the Constitution of India. He also seeks a direction to the respondents to convene Departmental Promotion Committee for selection for the post of Head of the Department, Commercial Arts in consultation with old Recruitment Rules of 1971 as the vacancy in the said post had fallen vacant on 1.7.2001 by preparing year-wise consideration zone and year-wise panel in terms of DOP&T Memo dated 24.12.1980 and the judgment of the Hon'ble Supreme Court in N.R. Banerjee Vs. U.O.I. & Others.

2. Briefly, the allegations are that the applicant joined Women's Polytechnic of the respondents as Lady Assistant Lecturer on 13.11.1972. In due course, her services were regularised as Lady Lecturer and on 2.6.1986, she was promoted to the post of Lady Lecturer. On 12.4.1989, on the retirement of the Head of the Department, Commercial Art, the applicant was directed by the Principal to look after the work of the post of Head of the Department, Commercial Art on 22.8.2001. The recruitment rules have been amended thereafter vide Notification dated 22.8.2002. The amended rules have

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prescribed First Class Master's Degree in Fine Art or Commercial Art or Applied Art from a recognised University/Institution or equivalent or 8 years experience in Teaching Field/Industry/Training out of which 3 years as Lecturer (Senior Scale) or equivalent etc. etc. This will disqualify the applicant from consideration for promotion. As against this the earlier recruitment rules had prescribed the qualification ~~and~~ degree in Commercial Art with specialization in any subject other than the Interior Decoration and Display from a recognised University/Institution and about 3 years Professional/Teaching experience in Commercial Art etc. The new recruitment rules have prescribed qualification to the detriment of the applicant. The applicant has submitted that ~~the~~ she has three decade's unblemished record while working as Lecturer/Senior Lecturer and she was eligible to be considered for promotion to the post of Head of Department, Commercial Art as per recruitment rules of 1971; she had been working as Lecturer in-charge, same as Head of Department of Commercial Art from 22.8.2001 after the post of the Head of the Department, Commercial Art had fallen vacant on 1.7.2001; the applicant has the first pre-emptive right to the post of Head of the Department, Commercial Art, having been adequately qualified as per recruitment rules which were in force at the time when the vacancy occurred; the new recruitment rules for no apparent reason have upgraded the educational qualification from graduation to post graduation in Commercial Art though there was qualitative change in the Head of the Department, Commercial Art but the new rules will adversely affect the career prospect of the applicant since the applicant would be denied regular appointment to the post of Head of the Department as a consequence of the amended recruitment rules; the vacancy in the post of Head of the Department, Commercial Art occurred on 1.7.2001 and has to be filled up by applying the rules as



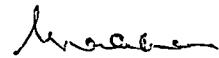
were in force then. 10

3. The respondent Nos.1, 2 and 4, the Government of NCT of Delhi, The Director, Directorate of Training and Technical Education and the Principal Meera Bai Polytechnic in their joint written reply have repudiated the claim of the applicant. It is submitted that the Department of Training and Technical Education deals with the running of All India Council for Technical Education (AICTE) approved programme. AICTE is a statutory body which prescribes guidelines and the service conditions for the technical teachers. In accordance with the recommendation of the Pay Commission, AICTE had issued guidelines for the degree/diploma level institutions. The Government of Delhi has accepted the recommendation in the year 2003 which are effective from 1.1.1996. These recommendations are subject to the latest qualification as prescribed by AICTE. Prior to 1.1.1996, Dogra Committee recommendations prescribed on 1.1.1986 AICTE were in effect and these were also subject to the laid down conditions as far as qualification and experience for the specific posts were concerned. The Government of Delhi has accepted AICTE recommendations, which are mandatory in nature. The respondents had carried out amendment in the Recruitment Rules for the post of Head of the Department, Commercial Art as required as per the DOP&T, which were notified vide Notification dated 27.8.2002 (Annexure A) to the OA. The process of filling up the post of Head of the Department only after the said notification amended the rules and the qualification prescribed were as per the directions of the AICTE in its order dated 17.12.1996. The process of filling up the post of Head of the Department, Commercial Art were underway and the names of all eligible officers had been forwarded to UPSC on 8.1.2004. The fact relating to the date of occurring of the vacancies and the recruitment rules which were in

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force then and the applicant's eligibility as per the provisions of recruitment rules, have also been forwarded to the UPSC along with explanatory note. It is submitted that the OA has no merit and it should be dismissed.

4. The respondent No.3, UPSC, in its short counter-affidavit has pleaded that Union Public Service Commission is a constitutional body and discharges its functions under Article 323 of the Constitution of India. The proposal for amendment of recruitment rules for Head of the Department, Commercial Art was received in the Commission on 9.8.2001 (Annexure-I). In the proposal it was stated that the scale of the pay of the post was revised from Rs.3000-4500 to Rs.12000-18000 and that the educational qualification has also been modified in conformity with the AICTE guide-lines. The department has also insisted for prescribing the same educational qualification for promotees as that prescribed for direct recruits. In fact, the old rules (Annexure-II) also prescribed the same applicability for promotees as that prescribed for direct recruits. However, with the revision of scale of pay, the AICTE itself has issued letter dated 17.12.1996 (Annexure-III) laying down the qualification and experience for faculty post in Non- Engineering Diploma Programmes in Technical Education Institutions. However, the guide-lines did not indicate the qualification for the post of Head of the Department, Commercial Art. So a clarification was sought from the Government of Delhi vide letter dated 26.12.2001 (Annexure-IV). The department was also requested to forward a copy of the AICTE guide-lines laying down the qualification specifically for the post of Head of the Department, Commercial Art. The Delhi Government by letter dated 11.2.2002 (Annexure-V), intimated that AICTE has separately laid down guide-lines for vacancies for various non-engineering disciplines where no Bachelor degree in the subject



concerned is offered by the University, such as Beauty Culture, Interior Decoration, Dress Making, Costume Design etc. But in the case of Applied Art and Commercial Art, there were regular courses offered by various institutions/universities, both at Bachelor degree as well as Master degree level. The department has also stated in their communication that AICTE in its letter dated 17.12.1996 mentioned that wherever qualification of Bachelor degree or Master degree level is available, these may be adopted so there was no need for separately laying down guidelines for qualifications in respect of these disciplines for Head of the Department, Commercial Art. Government of Delhi has accepted the advice of the Commission and notified the recruitment rules on 27.8.2002. On a clarification about prescription of higher qualification particularly as to whether the Government has considered the interest of the existing incumbents holding the post of Lecturer, The Government has categorically stated in its letter date 5.11.2001 that the revision was necessary as the pay scale of the post had been revised by the AICTE and the AICTE has also laid down the guidelines for qualification.

5. In the rejoinder, the applicant has reiterated his case and has controverted the allegation of the respondents.

6. We have heard the arguments of the learned counsel for the parties and have also perused the relevant record.

7. First and foremost argument of the learned counsel for the applicant is that the vacancy in the post of Head of the Department, Commercial Art had taken place on 1.7.2001, therefore, it should be filled up in accordance with the Recruitment Rules, 1971. It is argued that the new recruitment rules which have been notified vide notification dated 27.8.2002 cannot be given effect retrospectively and the recruitment to

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the post cannot be held in accordance with the new rules. It is also argued that the guidelines of AICTE are not mandatory and as per the allegation of the respondents the order of the Hon'ble High Court in the case of Sanjiv Lochan Gupta and Others Vs. Government of NCT of Delhi and Others (CWP No. 1613/2001) to this effect is under challenge before the Hon'ble Supreme Court. According to the applicant she is eligible for consideration for promotion to the post of Head of the Department, Commercial Art in accordance with the unamended rules and that the new rules have prescribed higher qualification to her detriment since the higher qualifications, which have been prescribed for the direct recruits has also been applied to the promotees also. Reference was made to the order of the Chandigarh Bench of the Tribunal in OA No.1006-PB of 1994 in Gurmeet Singh Vs. U.O.L & Others in support of his argument. It is also argued that the applicant as Senior Lecturer is discharging the duties of Head of the Department, Commercial Art since 22.8.2001, therefore, she had preferential right to be considered for promotion to the post. It is also argued that the recruitment should have been against year-wise vacancies as held by the Hon'ble Supreme Court in Union of India and Others Vs. N.R. Banerjee and Others, (1997) 9 SCC 287.

8. Controverting the arguments of the learned counsel for the applicant, the learned counsel for respondent Nos. 1, 2 and 4 has argued that AICTE is a statutory body and a necessary party to the present proceedings so the present OA is bad for non-joinder of AICTE. The higher qualification has been prescribed in the recruitment rules for the post of Head of the Department, Commercial Art on the instructions and as per the guidelines of AICTE. The recruitment rules were amended in accordance with those guide-

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lines. Though judgment of the Hon'ble High Court in Sanjiv Lochan Gupta (Supra) has been challenged before the Hon'ble Supreme Court but the instructions and guidelines issued by the AICTE in the matter of qualification and service conditions of the technical faculty in these Technical Institutions where AICTE approved courses are being run are mandatory. It is also stated that the new Recruitment Rules have been framed in consonance with the AICTE instructions and guidelines under which higher pay scale and higher qualification has been prescribed. He has also argued that AICTE's guidelines/instructions were approved by the government in 2003 with retrospective effect from 1.1.1996, and that Recruitment Rules were being framed and correspondence was being exchanged with the UPSC and AICTE before the vacancy occurred. So the vacancy in the post of HOD, Commercial Art shall be filled up as per new Recruitment Rules and not old Rules. It is contended that the case of the applicant has no merit.

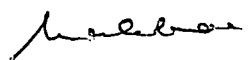
9. The learned counsel for the respondent No.3 – UPSC has adopted the arguments advanced by other respondents.

10. In the reply, the counsel for the applicant has argued that the recommendations of the AICTE made in 1996 have been accepted in the year 2003 and they could not be made effective retrospectively. It is also pointed out that the AITCE guidelines and recommendations were accepted by Delhi Government one year after the Recruitment Rules were notified. Further argument was that in the case of Principal's post, guidelines of AICTE were not followed as the old recruitment rules were followed.

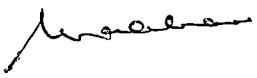
11. The first question to be answered is whether the new or old recruitment rules will be applied to the filling up of the vacancies of Head of the Department, Commercial Art. It is not denied that the AICTE is a statutory body and it lays down the guide-lines,

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educational qualification and service conditions for the technical teachers working in both Degree Level Technical Institutions as well as to the Diploma Level Technical Institutions. The Department of Training and Technical Education of the Government of NCT Delhi is running technical institutions which follow AICTE approved courses. AICTE made recommendations effective from 1.1.1996 on the subject of qualification of the technical teachers and their pay scale, which were accepted by the Government. According to the respondents the recommendations of AICTE are of binding nature and mandatory to be followed by the Government in respect of its technical institutions which follow AICTE approved courses. It is submitted that the educational qualification and other conditions of service prescribed by the AICTE for a specific post like Head of the Department, Commercial Art, is a policy matter and lies within the domain of a State. The policy of the State is not open to judicial review unless it contravenes the statutory rules or enactment or is violative of the provisions of the Constitution of India. The State has the necessary power to alter, amend and modify the service conditions of its employees with only restriction that it should not be detrimental/prejudicial to the existing employees. Career progression and promotion to a higher post is a legitimate expectation of every Government employee as per the rules and in accordance with fundamental right, every employee has a right to be considered for promotion when his juniors are considered for such promotion. But there is no indefeasible right for promotion from the date on which the vacancy in the higher post has taken place. It seems from the pleadings as well as the record that AICTE has made certain recommendations prescribing higher qualification and the higher pay scale for the post of Head of the Department, Commercial Art and certain other post in Technical Institutions



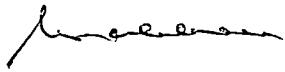
which were running its approved courses in the light of the recommendations of the 5th Pay Commission. These recommendations were under the consideration of the Government of NCT at Delhi. This necessitated change in the Recruitment Rules and a lot of correspondence was exchanged between the AICTE, Government of Delhi and UPSC which has to approve the Recruitment Rules before their ultimate approval and notification by the Government. After due and serious deliberation by the UPSC and the Government, the new recruitment rules have been notified in the year 2002. The post of Head of the Department, Commercial Art had fallen vacant in the meantime in July, 2001. It appears that in expectation of the recruitment rules being amended in accordance with the recommendations and guidelines of the AICTE the vacancy was not filled up. If it is so, it cannot be stated that the applicant's right for consideration for promotion to the post of Head of the Department, Commercial Art matured on 1.8.2001 when the vacancy in the said post occurred on the retirement of its previous holder of the post. The applicant did not have any indefeasible right to be considered for promotion as soon as the vacancy in the post of Head of the Department had occurred. The higher qualification has been prescribed in view of the upgradation of the pay scale of the post pursuant to the recommendations of the Pay Commission. The applicant, if prejudicially affected by the prescription of the higher educational qualification etc., she cannot claim to be considered to the upgraded scale of the post of Head of the Department, Commercial Art on the basis of old recruitment rules. The framing and notification of the recruitment rules has always been cumbersome and a long drawn process. Therefore, merely because the vacancy has occurred in 2001, no right has been accrued to the applicant for consideration of her promotion as per the old rules against the vacancy. The government was bound by the



recommendation/guidelines of the AICTE since it was running its approved courses in the Institution and it had also accepted its recommendations about the service condition of the technical teachers, their qualification and the pay scale etc. w.e.f. 1.1.1996.

12. The argument of the learned counsel of the applicant ^{is} that the respondents are adopting a contrary stand, in as much as in the matter of appointment of Principal they had followed the old rules between 2001-2004 but in the case of Head of the Department, Commercial Art, they are insisting upon recruitment in accordance with the new rules. The applicant has filed copies of certain letters by which the Principals have been appointed in certain institutions. But all those appointments are on ad hoc basis till the regular appointments are made by the UPSC. Therefore, those appointments cannot be said to have been regularly made under the old rules.

13. One of the arguments of the applicant is that she had been working as Senior Lecturer In-charge of the Head of the Department, Commercial Art and performing duties of Head of the Department, Commercial Art, but this by itself does not give ^{her} a legal right to hold on this post. The copy of the order of the Principal has been filed by her as Annexure-A. It would itself show that she was only asked to look after the duties of the post of Head of the Department, Commercial Art in addition to her own duties and she was not entitled to the payment of the emoluments of the post of Head of the Department. In fact, the applicant herself does not claim that she was appointed to the post of Head of the Department, Commercial Art or the Principal was competent to appoint her as HOD in accordance with old recruitment rules. The applicant was not appointed on ad hoc basis. She was looking after the work of the HOD so that the work of the Commercial Art department does not suffer in the absence of a regular Head of the



Department. It was only a temporary stop gap arrangement. It does not give any legally enforceable right to the applicant to claim her appointment to the said post.

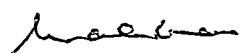
14. In the case of Gurmeet Singh and Others (Supra), the applicants who were Technicians, had come to the Tribunal against the revision of the eligibility criteria for promotion to the post of Telecom Technical Assistant. They filed OA seeking direction that they should be promoted strictly in accordance with the statutory rules of 1991. Under these rules, recruitment was to be 100% by promotion from amongst Group 'C' and 'D' cadre employees possessing 3 years Diploma in Electrical/Mechanical/Radio/Telecom/Eelctrical Engineering and if they were not eligible through competitive examination from amongst Technicians who were non-Diploma holders. In 1990, there were 64 vacancies in the cadre of Telecom Technical Assistant and 27 persons were promoted. On 29.3.1994, the respondent department issued order that two lists would be prepared one of persons who had requisite Diploma and the second of the candidates who qualify the screening test and then the two lists would be merged on the basis of their inter-se seniority in the particular grade as per clarification dated 27.4.1994. The contention of the applicant was that recruitment to the post of Telecom Technical Assistant was governed by statutory rules and the department had no power to make change or amend these statutory rules by executive orders. They admitted that statutory rules had been amended and notified on 31.12.1994. However, their case was that that vacancies which had occurred till 31.12.1994 were governed by old rules and should be filled up under the old rules. The department pleaded that the decision taken was pursuant to the restructuring of the cadre. The Tribunal held that the rules framed under the Article 309 of the Constitution of India could not be amended by

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executive instructions and the recruitment to the vacancies had to be governed by the recruitment rules then applicable and not by subsequent. But in the present case, the administrative instructions have not amended the recruitment rules. The recruitment rules were amended on the recommendations as per the guidelines laid down by the AICTE. It is a statutory body and prescribed the educational qualification and the service condition of the Technical Teachers in Technical Institutions running by the State Government. The vacancies were not filled up as the amendment of the rules was in the offing with the approval of the UPSC, therefore, the facts are distinguishable and no advantage of the judgment could accrue to the applicant.

15. In Sajiv Lochan Gupta's case the Hon'ble High Court has observed that AICTE was a statutory body established for proper planning and coordinated development of the Technical Education System throughout the country, the promotion of qualitative improvement of such education in relation to planned qualifying growth and proper maintenance of norms and standards in the Technical Education and for the matter connected with it. It was further observed that the powers of the AICTE were not subject to any rules and/or regulations and it can be exercised from time to time. After considering the case law it was held that in the matter of laying down the norms and standard and also the qualification which would include teaching staff and the direction issued by the AICTE, shall be binding and there could not be any doubt. A direction was given to the respondents – Government to strictly comply with the directions of the AICTE, as contained in the said notification. Though it is argued that the respondents had assailed this order before Hon'ble Supreme Court and it is pending. The argument of the learned counsel for the applicant is that the respondents – Government cannot approve



and re-approbate, challenge the order of the Hon'ble High Court in the Supreme Court and then rely upon this order before the Tribunal. It is true that the respondents have challenged the order of the Hon'ble High Court and the matter is sub-judice but the fact remains that the order of the High Court has not been stayed by the Hon'ble Supreme Court. Even otherwise, this Tribunal has come to the conclusion that the directions and the guide-lines of the AICTE in the matter of prescription of educational qualification and the service conditions of Technical Teachers is binding on the Technical Institutions which are running its approved courses.

16. For the reasons stated we do not find any merit in the case of the applicant in the OA. Accordingly, the same is dismissed but without any order to costs.

S.K. Naik
(S.K. Naik)
Member (A)

M.A. Khan
(M.A. Khan)
Vice Chairman (J)

Rakesh