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**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1039/2004

New Delhi this the 23rd day of February, 2005.

**Hon'ble Sh. Shanker Raju, Member(J)
Hon'ble Sh. S.A. Singh, Member(A)**

Sh. Ram Prakash Pathak,
Asstt. Teacher,
MCD Primary School,
Bharoli II, Delhi-96.

....

Applicant

(through Sh. S.N. Tripathi, Advocate)

Versus

1. The Director of Education,
Directorate of Education,
Govt. of NCT of Delhi,
Old Secretariat Building,
Delhi-54.
2. Deputy Director of Education,
Distt. North East, B Block,
Yamuna Vihar- Delhi.
3. A.O. Estt. III Branch,
Directorate of Education,
Old Secretariat,
Delhi-54.
4. Govt. of NCT of Delhi through
the Chief Secretary, Govt. of NCT
of Delhi, Old Secretariat,
Delhi-54.

.... Respondents

(through Sh. George Paracken, Advocate)

O R D E R

Hon'ble Sh. Shanker Raju, Member(J)

Applicant impugns respondents' order dated 11.9.2003 whereby he

has been denied promotion to the post of TGT (Sanskrit).

2. Applicant has been working as an Asstt. Teacher in MCD School. Applicant has passed his graduation as Bachelor of Arts from University of Allahabad with elective subject Sanskrit in Part-I and II. Thereafter the applicant has obtained Master Degree in Sanskrit from Kanshi Vidyapeeth Varanasi, the deemed university, securing 48% marks. In view of the educational qualification, applicant was selected for promotion to the post of TGT (Sanskrit) from MCD quota. Applicant was called in the Directorate of Education to complete the formalities. Name of the applicant was not cleared as it transpired that the applicant had not studied Sanskrit in 3rd year of basic course.

3. Applicant through his representation questioned this. Thereafter the juniors were promoted giving rise to the present O.A.

4. Before we advert to the contentions raised by the applicant to resolve the controversy effectively, pleadings by the respondents is to be highlighted first.

5. Shri George Paracken, learned counsel of the respondents stated that as per the recruitment rules for TGT (Sanskrit), the condition of promotion was to fulfill all requirements in the recruitment rules. As per the recruitment rules, an eligible candidate is one who possesses Bachelor degree with Sanskrit as one of elective subject from a recognized university having secured 48% marks in aggregate or an equivalent degree with above marks.

6. As per the decision taken by Cabinet of General Administration Department on 21.5.1997, para-5 provides as under:-

"While deciding the eligibility of candidates in different subjects at graduation level i.e. Maths, Natural Science, Social Science, English, Hindi, Sanskrit, Punjabi and Urdu, elective subject as specified in the R/Rules may be interpreted to mean all those who have passed the concerned subject in all the years/semesters of graduation as the case may be with atleast 100 marks paper each year/semester in the concerned teaching subject as the case may be. The elective word may also include main subject as practiced in different universities."

7. In the above view of the matter as the applicant had not studied Sanskrit in the 3rd year being ineligible under the rules, applicant's candidature was cancelled and elective subject is incorporated to mean that a person should have studied the subject throughout the Bachelor course in each year with marking of atleast 100 marks in each year of the concerned subject. As the applicant did not have Sanskrit as elective subject in 3rd year finding him to be ineligible, promotion was denied. Applicant's counsel contends that, as per the recruitment rules, it is not specified that Bachelor degree with Sanskrit as one of the elective subject has to be read throughout 3 years. Once the applicant having a Postgraduate Degree in Sanskrit which is more than the equivalent of Bachelor Degree in Sanskrit, the object of promotion as TGT (Language) teacher in Sanskrit an experienced man with proper qualifications in Sanskrit is met and he should be promoted. Keeping in view the underlying the above object, if the applicant is Postgraduate in Sanskrit and there is no stipulation in the rules as to the subject being elective in all the years having studied Sanskrit for two years, the decision of the

Cabinet which is an executive decision where word 'elective' has been interpreted is inconsistent with the rules rather over-riding it. As the trite law is that an executive instruction cannot whittle down the statutory rules, denial of promotion to the applicant is illegal. Learned counsel further states that as per Ordnance for the degree of Bachelor of Arts issued by the University at Allahabad a regular course of study means attendance at such percentage and every candidate for Bachelor Degree shall be required to show a competent study in Part-I as well as in Part-II examination and thereafter two subjects in Part-III examination. Every candidate for a Bachelor degree course shall have to pass in each part with a minimum percentage.

8. Learned counsel further states that as per a letter written from Kanshi Vidyapeeth, the rejection on the ground that one has not taken Sanskrit as a subject in all three years of Bachelor degree, is not legal. Once the person is Postgraduate in the concerned subject, the aforesaid decision lacks logic and rational.

9. We have carefully considered the rival contentions of the parties and perused the material placed on record.

10. It is trite law in the light of decision in the case of T.N. Housing Board Vs. N. Balasubramanium & Ors. (2004 SCC (L&S) 833) wherein it was held that executive instructions as a subordinate legislation if in conflict with the rules, the same would not be allowed to override the statutory Rules. Further in Pankajakshan Nair Vs. P.V. Jayaraj & Ors.

(2003 SCC (L&S) 765) it is held that a right of promotion cannot be taken away by an administrative order.

11. Post of TGT/LT which includes TGT (Sanskrit) is regulated by Recruitment Rules for the post of TGT/LT promulgated vide Notification dated 30.12.1992 as amended on 17.1.1994 and 1.10.1999 in so far as qualification for direct recruits and promotees provides as under:-

"II. LT Sanskrit:

A Bachelor Degree with Sanskrit as one of the elective subject from recognized university having secure atleast 45% marks in aggregate.

Or

Equivalent original degree in Sanskrit from recognized university having secure atleast 45% marks in aggregate.

III. Degree/Diploma in teaching

Or

Senior Anglo Vernacular Certificate (SAV)

IV. Knowledge of Hindi is essential

Age - No

Educational Qualifications - Yes"

12. From the literal and grammatical interpretation of the above statutory rules, the only requirement for educational qualification required for the post is a Bachelor Degree in Sanskrit as one of the elective subject with atleast 45% in aggregate. The rule does not provide that an elective subject should be owned in all the years of graduation.

We find that the applicant has passed his Bachelor of Arts Degree in Ist

class with more than 60% of marks in 1990 and has taken Sanskrit as an elective subject in Part-I and II.

13. Moreover, we find that second leg of qualification is an oriental degree in Sanskrit from a recognized university with atleast 45% marks. As the applicant has not only studied Sanskrit at graduation level, a recognised university Kanshi Vidyapeeth has also awarded the applicant postgraduate degree in Sanskrit with more than 45% marks. In our view though a higher qualification would not bestow a higher or preferential claim if a person is Postgraduate in Sanskrit having studied elective subject, the very purpose and object of appointment as TGT to have the requisite knowledge of the candidate applying for the post in particular language having been satisfied, denial of promotion is not sustainable.

14. Another aspect of the matter is that though the rules are silent as to elective subject through out the graduation yet the Cabinet had decided that the word elective would be incorporated in a manner that would include main subject. Practice in different universities and the person should have passed the subject in all the years with atleast 100 marks ear-marked for each year. First of all, we have no hesitation to hold that such an interpretation through an executive instruction would amount to supplant the rules and the administrative decision is contrary to the statutory rules in denying the promotion to the applicant as such would not over-ride the statutory rules for promotion being repugnant to it.

15. Assuming such an interpretation in Cabinet decision is correct there would be no difference in honors degree or a Bachelor Degree with Sanskrit as one of the elective subject, such an interpretation makes statutory rules absurd and redundant.

16. In the result, for the foregoing reasons, we allow this OA. Impugned order is set aside. Respondents are directed to treat the applicant as qualified for the post of TGT (Sanskrit) and be considered for promotion. In that event, he would be entitled to promotion from 11.9.2003 and also seniority and other benefits. This shall be complied with by the respondents within two months from the date of receipt of a copy of this order. No costs.



(S.A. Singh)
Member(A)



(Shanker Raju)
Member(J)

23/2/05

/vv/