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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1260/04

New Delhi, this the 19th day of January, 2005

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

Krishan Kumar
H.No.372, Vill & PO Jonti
New Delhi

Applicant

(Shri V.S.Tomar, Advocate)

versus

Government of NCT of Delhi, through

1. Secretary
Directorate of Education
Old Sectt. Delhi
2. Director of Education
Old Sectt. Delhi
3. Dy. Director of Education(Admn. Branch)
North West(B) District
FU Block, Pitam Pura, New Delhi

Respondents

(Mrs. Avnish Ahlawat, Advocate)

ORDER

S.K. Naik

The applicant who was appointed as Physical Education Teacher on provisional basis under physically handicapped quota during May, 2000, was issued a show cause notice on 21.12.2000 as to why his services should not be terminated as it was detected that he was not possessing the educational qualification prescribed in the R/rules for the post. This was followed by another memorandum dated 23.6.2003 calling upon him to submit his representation along with all relevant documents in support of his claim and he responded to the same on 7.7.2003. He was also given another opportunity in the form of memorandum dated 10.11.2003 to explain his position and the applicant gave his reply on 22.11.2003. On perusal of his explanation, respondents found that the applicant does not possess the essential qualification prescribed for the post in question and the qualification possessed by him i.e Bachelor of Sports Humanities cannot be equated with that of prescribed for the post as per the R/Rules. It was also found by the respondents that the applicant is disabled to the tune of 65% making him incapacitated to impart training to students.

Naik

The applicant was also directed to appear before the Staff Surgeon of Lok Nayak Jai Prakash Narain Hospital but he failed to do so. Finding that the appointment of the applicant was wrongly made as against the notified R/Rules as also the DoPT instructions dated 28.2.1986 and 25.11.1986, his services were terminated by the respondents vide order dated 26.4.2004. Aggrieved by this, applicant has filed the present OA seeking quashment of the order dated 26.4.2004 and a direction to the respondents to reinstate him in service.

2. We have heard the learned counsel for the parties and considered the pleadings.

3. The main ground advanced by the learned counsel for the applicant in support of the reliefs prayed for is that in case of similarly situated persons i.e. Bharat Lal Meena and Surender Singh, who were also physically handicapped and were appointed as PETs along with the applicant, this Tribunal has directed for their reinstatement and the Delhi High Court has also affirmed the direction of the Tribunal and, therefore, the case of applicant should also be treated alike. According to the counsel, the impugned order has been passed without application of mind and without appreciating the relevant facts like disability of the applicant and the post of PET fall in the category listed from Sl.No.56 to 63 of the OM dated 26.2.1986.

4. Countering this argument, the counsel for the respondents has submitted that in the case of Bharat Lal Meena and Surender Singh, the issue raised was whether the specific post of PET has been identified/recognized for physically disabled persons or not and whether they can perform the duties and functions of a PET. It was held by the Delhi High Court that since in spite of being physically disabled, those applicants acquired the essential qualifications and therefore their appointments cannot be disturbed. Therefore, these decisions would not support the claim of the applicant. According to the counsel, the qualification possessed by the applicant i.e. Bachelor of Sports Humanities cannot be regarded equivalent to any of the three qualifications required for the post of PET as per the R/Rules. Even in the present OA applicant has not established or made any averment that he has the requisite educational qualification required as per rules. Applicant's upper and lower right side is paralyzed on account of depressed fracture of skull resulting in 65% of his being handicapped. The nature of disability the applicant suffers makes him incapable to impart training to the students in drill, physical education, various games like hockey, cricket, volley ball, handball etc. A PET has to perform the duties in the field and the person has to be physically fit with all the four limbs, as he has to impart training to the children in various sports and physical activities and a disabled person like the applicant herein cannot perform this job. In so far as OM

dated 28.2.1986 on which the places reliance, the counsel has contended that in the list of jobs, attached with the said OM, identified for being held by physically handicapped persons, categories of the disability have been provided after considering the nature of duties which are to be performed in each post/job. In the said list, except the posts of teachers i.e. which are subject posts, only one non-subject teacher i.e. Art Teacher, has been identified and not the post of PET. The applicant was wrongly given appointment on provisional and temporary basis as there were no interviews. In view of this position, applicant's services have rightly been terminated, he has contended.

5. The counsel for the respondents has also drawn our attention to the judgement of the Supreme Court in **Director, AIIMS etc. Vs. Dr. Nikhil Tandon & Ors. 1996(2)SLR 59** in which the apex court has held that "It is not mere equivalence that is enough. It must also be recognized as equivalent. Recognised evidently means recognized by the Institute or at least by the Medical Council of India. Admittedly, neither has recognized the said research work/training of two years in the Cambridge University as equivalent to DM". He has contended that neither there is any order issued by the Government nor is there any amendment in the R/Rules for the post of PET, recognizing/treating the qualification possessed by the applicant as equivalent to that of the one prescribed for the post of PET. Hence, the OA be dismissed, the counsel has concluded.

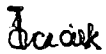
6. We have carefully gone through the decisions of the Tribunal as also the Delhi High Court in the cases of Bharat Lal Meena and Surinder Singh who were also appointed as PETs. In these cases, the issue involved was not the qualification as the applicants therein were already possessing the requisite qualifications attached for the post of PET. Their services were terminated because the Government felt that as physically handicapped persons they cannot perform their duties properly. The High Court has held that once they have passed the examination, it must be held that they were physically fit to perform their duties and any report of any Committee shall not be relevant to the said purpose. Therefore, we are of the considered opinion that these decisions would not come to the rescue of the applicant. On the other hand, the decision of the Supreme Court in the case of Dr. Nikhil Tandon (supra) would be applicable to the present case inasmuch as not only the qualification possessed by the applicant can not be treated as equivalent to that of the one prescribed for the post of PET in the absence of any order/notification issued by the Government to that effect but also on the ground that the applicant has acquired the disability after getting the degree of Bachelor of Sports Humanities, on which much reliance has been placed by his counsel. Thus we do not find any flaw with the action

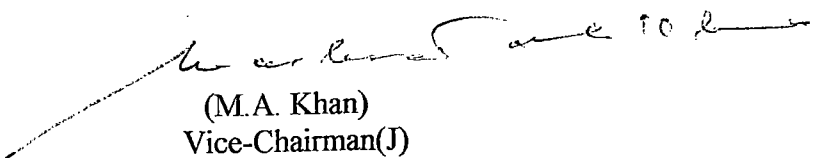
Dr. Nikhil Tandon

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taken by the respondents in terminating the services of the applicant. In fact they have passed a very detailed, reasoned and self-contained order which does not suffer from any infirmity or illegality.

7. Resultantly, we find no merit in the present application and the same is accordingly dismissed. No costs.


(S.K. Naik)
Member(A)


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

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