

Central Administrative Tribunal
Principal Bench

OA No. 1519 of 2004

New Delhi this the 14th day of September, 2004.

Hon'ble Mr. Kuldip Singh, Vice-Chairman (J)
Hon'ble Mr. S.A. Singh, Member (A)

Rakesh Sehrawat,
S/o Sh. Jagdish Singh Sehrawat,
R/o RZ8, 'B' Block, Gopal Nagar,
Najafgarh,
New Delhi – 110 043.

....Applicant

(By Advocate: Shri T.V. George)

-versus-

1. Government of National Capital Territory of Delhi through Lt. Governor, Raj Niwas, New Delhi.
 2. Delhi Subordinate Service Selection Board through its, Secretary, UTCS Building, Institutional Area, Vishwas Nagar, Shahdra, Delhi – 22.
 3. Principal Secretary, Education Govt. of NCT of Delhi, Indraprastha Sachivalaya, New Delhi
- ...Respondents

(By Advocate: Shri George Paracken)

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Vice chairman (J):

Through this Original Application the applicant is seeking quashment of the order dated 7.6.2004 (Annexure A-1) whereby the candidature of the applicant for the post of Trained Graduate Teacher (Social Science)(Male) was cancelled. He further seeks a declaration to



the effect that he is entitled for consideration for appointment to the said post of TGT (Social Science).

2. The facts, as alleged by the applicant in brief are, that the Govt. of NCT of Delhi vide Annexure A/2 issued an advertisement through Delhi Subordinate Services Selection Board (for short DSSSB) for filling up various posts of TGT in different disciplines and out of which two disciplines were that of TGT (Social Science) and TGT (English). The procedure prescribed for making an application was that along with application form, the candidates were also supposed to write their post-code for which they are applying. The post code for the post of TGT (Social Science) was 0087 and for the post of TGT (English) was 0089.

3. The applicant claims that he had applied for TGT (English). However, he was surprised to receive an admit card with post code of TGT (Social Science). Hence, he contacted the office of DSSSB and made verbal enquiries from the person concerned there and asked for issuance of a duplicate admit card.

4. It is further contended that the applicant was issued a duplicate admit card mentioning the post code 0087 which was meant for TGT (Social Science). Though the applicant made a verbal protest that since he had applied for the post of TGT (English), he should not have been issued an admit card for the post of TGT (Social Science) but the person concerned, who was issuing the duplicate admit cards, stated that the duplicate cards are issued through computer on the basis of data available in the computer. Accordingly, the duplicate card was issued to the applicant as if he had applied for the post of TGT (Social



Science). It is pertinent to mention here that applicant did not make any written protest.

5. However, the applicant appeared in the examination meant for the post of TGT (Social Science) and as luck favoured him, he qualified the same. Thereafter vide Annexure A/5 the applicant was issued an appointment letter for the post of TGT (Social Science). ^{Recruitment to} ~~and was called upon to furnish some documents in~~ Subsequently, it revealed to the department that the applicant had applied for the post of TGT (English) with post code 0089 as mentioned in the application form no. 004506 but inadvertently, he was issued an admit card for TGT (Social Science). Though the applicant had asked for duplicate admit card but he did not bring the mistake to the notice of the Board and also did not get the error rectified. As the applicant had not applied for the post of TGT (Social Science), the Board had cancelled his candidature for the post of TGT (Social Science) and also treated his answer sheets as null and void. In order to challenge the same, the applicant submits that the action of the respondents is illegal, arbitrary and unjustified as the same was passed without following the principles of natural justice and even without issuing any show cause notice to him.

6. The applicant further submits that it was within the knowledge of the respondents that he had applied for both the posts of TGT (Social Science) and TGT (English) in a single application form. Though it was mistake on the part of the applicant but the respondents themselves had chosen to treat the said application only for the post of TGT (Social Science) and no admit card was issued to him for the post of TGT (English).

7. The applicant further submits that he had contacted the respondent no. 2 for issuance of admit card for the post of TGT (English) as well. However, he was issued a duplicate admit card again for TGT (Social Science), therefore, despite his efforts, the respondents had not taken any corrective measures at that time. The applicant further submits that as per paragraph 7 of the advertisement cancellation of selection or candidature can be done if a candidate furnishes any false information or submit any document which is defective or fabricated or otherwise commit any act of misconduct in submitting the application forms or during the course of recruitment. In case any such case is detected, the Board reserves its right to stop/cancel any selection and take other legal action against the candidates concerned. The applicant, however, alleges that he had neither furnished any false information nor had submitted any fabricated documents/committed any act of misconduct but despite that, his candidature has been cancelled. However, he says that he has inadvertently applied for two posts in a single application form which can at best be described as a technical mistake and once the applicant was allowed to appear in the examination, the defect, if any, stood cured and the respondents are now estopped by the principles of estoppel from taking any such punitive action at this stage. It is, therefore, prayed that the impugned order be quashed and it should be declared that the applicant is entitled to be considered for appointment for the post of TGT (Social Science).

8. Respondents have contested the OA by filing their reply and pleaded that as per advertisement (A/2) it has been specified that

each post carries a distinct 'post code number' and it was also mentioned in item no. 7 in part-II of the advertisement, that a candidate can apply for more than one post code if he/she is qualified for the posts concerned. However, separate application form should be filled up for each post code and separate application fee should be paid. A candidate should submit only one application for one post code and every application must be accompanied by a crossed Indian Postal Order for Rs. 100/- for Group 'B' posts and Rs. 50/- for Group 'C' posts payable to the Secretary, DSSSB, Delhi.

9. It is further stated that pursuant to the advertisement, the applicant had applied for only one post of TGT (English) by paying only Rs. 100/-. It is contended that from Annexure R-1, which is an application form submitted by the applicant, it is quite clear that the applicant had applied only for the post of TGT (English) and he had not applied for the post of TGT (Social Science), as claimed by him in his original application.

10. It is further stated that after fixing the date of examinations, separate notice to the candidates through advertisements are again given in leading newspapers mentioning therein that if any candidate who had applied for the above post(s) and fulfills the eligibility criteria, does not receive the Admit Card by 25th February, 2004, he/she may collect the duplicate admit card from the office of the Board on 26.2.2004 and 27.2.2004 and the candidates who come to collect the duplicate admit card must bring with him/her the acknowledgement card or any other proof of identification for issuance of duplicate admit card after due verification only.

11. The applicant also approached the respondents for issuance of a duplicate admit card claiming that he had applied for the post of TGT (Social Science). Accordingly duplicate card was issued to him with the post code of 0087 meant for the post of TGT (Social Science)(Male). However, by concealing this fact, the applicant has filed a photocopy of said duplicate admit card by erasing the word 'duplicate' from it, which is at Annexure A-3 with the O.A.

12. It is further stated that the applicant has also not filed acknowledgement card issued to him at the time of submitting the application form which contained the same serial number as that of the application form itself. So by manipulating to obtain a duplicate admit card for the post of TGT (Social Science), the applicant appeared for the said post and qualified the same. Thereafter the applicant was asked to produce the relevant documents to scrutinize his credentials and only on scrutiny, it was revealed that the applicant had applied for the post of TGT (English) but he appeared for the post of TGT (Social Science). Hence, his candidature was cancelled vide Annexure A-1.

13. It is further stated that as per copies of the educational qualification and other documents submitted by the applicant, it is revealed that he had 'English' as core subject during graduation whereas as per Recruitment Rules, a candidate should have 'English' as Elective subject during graduation to be eligible for the post of TGT(English), hence, the applicant was not eligible for the post of TGT (English). It is denied that the applicant had applied for both the posts of TGT (English) and TGT (Social Science) through a single application

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form. Thus, the applicant has no case and the original application filed by him deserves to be dismissed.

14. We have heard the learned counsel for the parties and gone through record of the case.

15. Learned counsel for the applicant submitted that there is no ground to cancel the applicant's candidature as per clause 7 of the terms and conditions of the appointment, which was published along with advertisement itself, as the applicant had neither furnished any false information nor submitted any fabricated or defective document/committed any act of misconduct, so his candidature is not liable to be cancelled at all. Clause 7 pertaining to 'cancellation of selection', is reproduced herein below for easy reference:

"7. Cancellation of Selection:

Candidates are warned that they should not furnish any false information or submit any document which is defective or fabricated or otherwise commit any act or misconduct in submitting the application forms or during the course of recruitment. In case any such case is detected, the Board reserves its right to stop/cancel any selection and take other legal action against the candidates concerned."

16. During the course of arguments, learned counsel for the applicant insisted that though the applicant had applied for the post of TGT (English), he was issued with an admit card for the post of TGT (Social Science) as such he approached the DSSSB for correction of the admit card but again he was issued with a duplicate admit card for TGT (Social Science). Hence, finding no alternative, he appeared for the post of TGT (Social Science) and qualified the same.

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17. Learned counsel for the applicant further submitted that there is no misrepresentation on the part of the applicant. It is only a mistake on the part of the respondents and because of that respondents are now estopped to cancel his candidatures for the post of TGT (Social Science) and the principles of estoppel as enshrined under Section 115 of the Indian Evidence Act squarely protects the case of the applicant and debars the respondents to cancel the candidature of the applicant for the post of TGT (Social Science). It is on the basis of the statement or representation made by the respondents that the applicant had altered his post and had appeared for the post of TGT (Social Science) so the respondents now cannot withdraw from their stand and cancel his candidature.

18. In support of his contentions, learned counsel for the applicant referred to various judgments such as **M.K. Raghavan vs. Jharsuguda Municipality**, reported as AIR 1973 Orissa 186, where it has been held that "in appropriate cases, rule of estoppel can be viewed as a substantive rule of law creating or defeating a right which would not exist or be taken away but for that doctrine". In that case a person was appointed by the Municipal Committee whose conditions of service were subject to approval of Government on its satisfaction that the appointee possessed the requisite qualification and the Government official in his inspection report also found him to be holding the required qualification and he was retained in service for a long time and up to an age when finding alternative appointment was not possible. It was further held that he could not be dismissed on the Government's directions that he did not possess the requisite diploma especially when persons of his like were in Government employment.

Learned counsel referred to another judgment rendered in the case of **K. Jagannadham vs. District Collector, Kurnool & Anr.**, reported as AIR 1966 Andhra Pradesh 59 in which it is held:

“Government servant – Dismissal and discharge – Petitioner allowed to appear for competitive examination, as being duly qualified – petitioner successful at examination – His appointment as probationer for two years – Discharge of petitioner after expiry of probationary period on ground that he was not qualified to appear for competitive examination – Negligence of Government – Petitioner becoming over age at time of discharge – Estoppel - Discharge held illegal - Evidence Act, (1872) S.115.”

19. Learned counsel for the applicant has also referred to another judgment rendered in the case of **New Marine Coal Co. (Bengal) Private Ltd. v. The Union of India**, reported as AIR 1964 SC 152

and stated that even if there is negligence on the part of the respondents in that case also, the principle of estoppel comes into play and in this case since there is a mistake on the part of the respondents, the applicant is entitled to the benefits of doctrine of estoppel and respondents should be held to be estopped to cancel the candidature of the applicant. On the same lines, the learned counsel has also referred to other judgments and submitted that the respondents are estopped to cancel the candidature of the applicant.

20. On the contrary, the learned counsel for the respondents submitted that there is no case of estoppel as no such representation was made, which may have misled the applicant or have made him to believe a situation, which according to the applicant himself, was false. Learned counsel for the respondents further submitted that the case argued by the applicant is contrary to his own pleadings. In the

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OA the applicant has set up his case as if he had applied for two posts and treat the applicant for one post TGT (Social Science) instead of TGT (English) whereas the department has placed on record the photocopy of the application form submitted by the applicant himself which clearly shows that the applicant had applied only for the post of TGT (English) and not for the post of TGT (Social Science). Besides that in the advertisement it was also made clear that if any candidates wants to apply for more than one post, then he had to submit separate application and applicant who was already working as ad hoc teacher with the Delhi govt. was very well aware that in case he wanted to apply for two posts, he should have submitted two separate application forms for such posts. Now the applicant at this stage cannot say that he had also applied for the post of TGT (Social Science), as pleaded by him in his OA.

21. In our view also, the contentions raised by the applicant at the Bar are quite contradictory to the stand taken by the applicant in his OA. The applicant cannot be allowed to change his stand at the stage of arguments. The applicant could not substantiate at all that he had ever applied for the post of TGT (Social Science), so there was no question for the department or DSSSB to treat the applicant as a candidate for the post of TGT (Social Science). The applicant was well aware that he had applied only for the post of TGT (English) so he should not have appeared for the post of TGT (Social Science) as he was not a candidate for the said post.

22. So far as the principle of estoppel is concerned, it is well settled that it is merely a rule of evidence and it does not create any right to

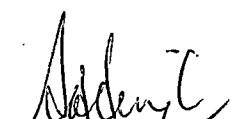
confer any cause of action. It only helps to create or defeat a right. In this case the applicant having not applied for the post of TGT (Social Science) cannot claim that if by mistake an admit card for the post of TGT (Social Science) has been issued to him then it gives him a right to appear in the examination meant for the said post for which he had not applied. Therefore, it does not create any right in favour of the applicant to appear for the post of TGT (Social Science). Reliance on Section 115 of the Evidence Act, which deals with principle of estoppel, has been wrongly pressed by the applicant.

23. On the contrary, Annexure R-1, clearly shows that the applicant in his own handwriting had submitted an application only for the post of TGT (English). The applicant has also not placed the acknowledgement slip issued to him on record, which would have also shown the post code number for which he had applied. He has intentionally withheld the same in order to take up the plea that he had applied for two posts in one application form.

24. As regards plea of the counsel for the applicant that under clause 7 of the advertisement the candidature of the applicant cannot be cancelled as the applicant has neither furnished any false information nor any document, which is fabricated or defective/committed any act of misconduct, we find that in this case even without aid of the clause 7, the candidature of the applicant can be cancelled since he was not a candidate at all for the post of TGT (Social Science) irrespective of the fact whether he has not filed any fabricated or defective document or made some false statement in the application form, but it is definitely a case that the applicant was not a candidate for the post of TGT (Social Science) at all.

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25. In view of the above discussion, we find that the O.A. of the applicant is devoid of merit and deserves to be dismissed. Accordingly, the same is dismissed with no order as to the costs.



(S.A.Singh)
Member (A)



(Kuldip Singh)
Vice Chairman (J)

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