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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.2513 of 1993

This 4th day of March, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

Mrs. Geeta Saini,
W/o Shri S.d. Saini,
House No. RZ-9B/1, Sadh Nagar,
Palam Colony,
New Delhi.

..... Respondents

By Advocate: Shri Ranbir Yadav

VERSUS

1. The Union of India, through
Secretary,
Ministry of Home Affairs,
New Delhi.

2. The Lt. Governor of Delhi,
Raj Nivas,
Delhi Administration,
Delhi.

3. The Joint Director of Education (Admn.)
Directorate of Education,
Establishment Branch-III,
Old Secretariat,
Delhi.

..... Respondents

By Advocate: Ms. Ashoka Jain

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A)

This O.A. No.2513/93 has been directed against the impugned order No.DE-3(15)/Estt.III/89/32023 dated 11.10.90 passed by Shri K.D. Tripathi, Jt. Director of Education, Directorate of Education, Delhi Administration, rejecting the application of the applicant for appointment as Trained Graduate Teacher in the Education Department of Delhi Administration.

2. In nutshell the facts of the case are that the applicant is seeking appointment to the post of Trained Graduate Teacher/LT on the basis of sports quota. For appointment to Class III (now Group 'C') posts of TGT in the Education Department of Delhi Administration the recruitment is made on the basis of rules framed by Delhi Administration and the pay-scales are admissible to the Trained Graduate Teachers(TGT)/Post Graduate Teachers(PGT and also the teachers of the primary schools working under the Delhi

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Administration on the basis of the recommendations of 4th Pay Commission supplemented by the Chattopadhyay Committee recommendations. There is a provision for appointment of outstanding and meritorious sportspersons under the policy framed by Government of India vide O.M. No.14015/1/76-EStt.(D) dated 4th August 1980. The O.M. of Government of India as quoted above has made provision of this reservation **under** rules to the extent of 25% in the category of Physical Education Teachers **for** outstanding sportspersons (men or women) provided they fulfil the other educational qualifications. So far as TGT/LT posts are concerned, 25% of posts are filled up by direct recruitment and remaining by promotion as per existing recruitment rules.

3. The applicant was born on 14.2.61. She is a good sportsperson is admitted. The various laurels won by her and the certificates given to her are annexed and marked as Annexure A-1 (collectively). She also participated in National Rifle Shooting Competition in 1982 ASIAD. The certificates given to her as a good sportsperson are admitted by the respondents. Para 5(a) (Procedure) of the O.M. quoted above lays down that the Ministries/Departments/Heads of Departments of attached and affiliated offices may consider the question of appointment of outstanding sportsmen provided they are satisfied about the eligibility of the candidate for the post in all respects. It further stipulates that where the appointing authority is subordinate to Head of Department, such authority will make his/her recommendations to the Head of Department along with necessary details and after clearance of the Head of Department he/she can make the appointment. The applicant made correspondence with the Delhi Administration Education Department authorities annexing the Memo of the Ministry. She was also asked to produce certificates in prescribed form vide letter No.327/EStt.III dated 3.5.90. Copy of the letter is enclosed as Annexure A-11 to the OA. After due consideration and in the light of the provision contained in the O.M. of the Home Ministry the impugned order was passed and issued. Her


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8. It is well established that the Tribunal can be approached by an aggrieved public servant or a person for suitable reliefs wherever a superior authority or the employer deals with him in a manner which is contrary to the Constitution or any Act of Legislature or statutory rule made under the proviso to Article 309 of the Constitution or under any Act of Legislature or the administrative instructions of a general nature which is intended to apply to all persons falling in the same class as the aggrieved person. In the **instant** case it will be seen that there is a general instruction, as quoted above, which applies to persons eligible for being considered against 25% quota of Physical Education Teachers provided they fulfil the eligibility criteria stipulated in the rules and regulations framed by the Ministries/Departments/affiliated or attached offices. The present applicant does not fulfil the eligibility criteria for appointment as a PET nor is there any provision in the MCD which has been violated requiring interference of the Tribunal. In the case of State of U.P. Vs. Babu Ram Upadhyay (AIR) 1961 SC 571, the Hon'ble Supreme Court has laid down that the Courts will enforce the statutory provisions or the administrative instructions only if the provision in question is of a mandatory nature and not merely directory and further if the provision is such as may be said to create a right in that behalf. This is not applicable in the present case.

9. The directions contained in the aforesaid circular are of a directory nature meant for Ministries/Departments/attached and affiliated offices. The MCD is not an attached or affiliated office of the Government of India. It is governed by Local Bodies Act and it has its own Mayor and Deputy Mayor and other corporators who are competent to frame the rules and to enforce it.

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claim was rejected on the ground that, "there is no provision of appointment under sports quota in the Municipal Corporation of Delhi and therefore the appointment as Assistant Teacher cannot be made under sports quota."

4. A perusal of the O.M. No.14015/1/76-Estt.(D) dated 14.8.80 issued by the Ministry of Home Affairs will show that the provision of appointment to the extent of 25% in the category of Physical Education Teachers is limited to Ministries/departments/affiliated and attached offices of Government of India. This appointment is limited to Group 'C' and 'D' posts only in relaxation of procedure of calling the names from Employment Exchange.

5. The applicant has sought the following reliefs:

- (i) to quash or set aside the impugned order dated 11.10.90;
- (ii) to direct the respondents to appoint the applicant as TGT (General) from 1.8.89;
- (iii) to direct the respondents to implement the Policy of Govt. of India vide O.M. No.14/1/72-Estt.(D) dated 28.12.72 and No.14015/1/76-Estt.(D) dated 4.8.90
- (iv) to call for the record of case; and
- (v) award of cost of application.

6. A notice was issued to the respondents who filed their reply and contested the application opposing the grant of reliefs.

7. Heard the learned counsels, Shri Ranbir Yadav for the applicant and Ms. Ashoka Jain for the respondents. The learned counsel for the applicant only relied on the aforesaid circular and argued that the applicant is entitled to appointment in the MCD as per the provision. The learned counsel for the respondents categorically stated that in addition to the application being barred by time and laches and thus not maintainable, there is no cause of action in favour of the applicant and there is no order required to be adjudicated upon within the provision of Section 19 of the AT Act, 1985.

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The application has no *prima facie* case for admission and is dismissed as such under Section 19(3) of the A.T. Act, 1985.

(B.K. Singh)
Member (A)

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(J.P. Sharma)
Member (J)

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