

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.904 of 1993

New Delhi, this the 18th day of March, 2007

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE MRS. NEENA RANJAN, MEMBER (A)

Ranbir Singh son of Shri Bhuru Ram Teacher presently
Posted at Government Boys Senior Secondary School,
Pooth Khurd, Delhi-39 (address of service of all notices:
Near Mandir Ishwar Colony, V & PO Bawana,
Delhi-110039.

.....Applicant.

(By Advocate : Shri Baljit Singh)

Versus

1. Director of Education,
Directorate of Education, Delhi Admn., Old Sectt., Delhi.
2. Controller of Examination, Directorate of Education,
Old Sectt., Delhi.
3. The Govt. of NCT of Delhi through
Chief Secretary, Sachivalya IP Estate, New Delhi.
4. Union of India through Secretary Education,
Ministry of Human Resources & Development,
Shastri Bhawan, New Delhi.

.....Respondent.

(By Advocate : Shri Vijay Pandita)

O R D E R

HON'BLE MRS. NEENA RANJAN, MEMBER (A) :

This OA at stage of admission was dismissed by Tribunal on 30.4.1993. Thereafter applicant filed another OA No.2373/2004, which was dismissed as withdrawn with liberty to take recourse under law vide order dated 1.10.2004. Consequently applicant filed RA No.312/2004 in present OA. This Tribunal vide its order dated 22.7.2005, recalled the earlier order passed in the present OA and restored the OA to its original position.

2. By filing this OA, applicant is seeking direction to respondents to appoint him as Head Master (Middle) from the date of his actual appointment with all consequential benefits.

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3. The facts of this case are that respondent No.1 published an advertisement for recruitment for the posts of Assistant Teacher, TGTs & PGTs (Head Master (Middle)) in the Directorate of Education, Delhi Administration, Delhi. In fact the post of Head Master (Middle) was not mentioned at the place where it was to be mentioned but it was mentioned at Serial No.21 in the list of optional subjects, copy of the Advertisement annexed as Annexure A-1. The applicant before applying for the post of Head Master (Middle), personally inquired from the office of the Controller of Examinations whether there is any vacancy for the post of Head Master (Middle) or it has been wrongly mentioned in the list of optional papers. The Superintendent of the Controller of Examinations told the applicant that it is because of printing error that the post of Head Master (Middle) is shown in the list of optional subjects instead of along with the heading for the vacancies such as Asstt. Teacher, TGT and PGTs etc. Otherwise also, Head Master (Middle) comes under the category of PGT, therefore, the Suptd. suggested/advised the applicant to apply for the post of Head Master (Middle). The applicant was not the only candidate who applied for the post of Head Master (Middle). Hundreds of other candidates also applied. The list of the optional papers mentioned in the advertisement are the subjects against which vacancies exist for the post of PGTs in Delhi Administration. As at Sl. No.21 at the place of optional paper Head Master (Middle) is mentioned. This categorically shows that vacancies existed for the post of Head Master (Middle) in the list of optional papers. The applicant applied for the post of Head Master (Middle) keeping History as optional paper for written test. After careful scrutiny of the application form sent by candidates, the applicant was issued

a call letter with Roll No.309908 to appear in written examination on 16.5.1991 and he appeared for the same. The respondent no.1 declared the result for PGTs but the result for the post of Head Master (Middle) was not declared. Thereafter, applicant wrote a number of letters to the concerned authorities. Finally respondent No.2, vide its letter dated 11.1.1992, asked the applicant to appear personally before him on 15.1.1992 to get his testimonials verified. Since there is no provision for interview after the written examination for the posts in question, checking the testimonials of the applicant by respondent no.2 shows that he was declared successful but till date no appointment letter has been issued to the applicant whereas the candidates for the other posts had been appointed and most of them have joined their duties.

4. After waiting for a reasonable time, the applicant wrote a number of letters and reminders to the respondents on 7.10.1991, 21.10.1991, 1.11.1991 and 15.11.1991, but to date, no reply has been received. The applicant has also written a letter dated 25.5.1992 to Secretary Education in this regard and sent a reminder on 5.6.1992. Ultimately, applicant served a statutory notice on 17.6.1992, to which also respondents have not paid any heed. Being aggrieved by the inaction on the part of the respondents, the applicant filed the present OA seeking the aforesaid relief on the following grounds:-

- (i) the act of the respondents in not appointing the applicant on the post of Head Master (Middle) even after declaring him successful is absolutely illegal, unjust, unfair and unconstitutional and violative of Articles 14 and 16 of the Constitution;

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- (ii) the applicant fulfills all the essential qualifications for the post of Head Master (Middle) and has also been declared successful in the written examination, which was conducted by the respondents. Therefore, act of not appointing the applicant is totally unjust in the eyes of law.

5. In their reply, respondents have raised a preliminary objection, i.e., the OA is not maintainable because it is barred by Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985, as this Hon'ble Tribunal vide its order dated 30.4.1993 dismissed the present OA. Thereafter OA 2373/2004 filed by applicant was also dismissed as withdrawn with liberty to take recourse under law vide order dated 1.10.2004 and thereafter the applicant filed RA 312/2004, which was allowed on 22.7.2005. Reliance is placed on the decisions of the Apex Court in the case of **State of Punjab vs. Gurdev Singh**, (1991) 4 SCC 1, **UOI vs. Ratan Chandra Samanta**, JT 1993 (3) SC 418 and **Harish Uppal vs. UOI**, JT 1994 (3) 126. In later case, Hon'ble Supreme Court ruled that delay defeats equity and the court should help those who are vigilant and not those who are indolent. The parties are expected to pursue their rights and remedies promptly and if they just slumber over their rights, the court should decline to interfere. In **Ratan Chandra Samanta** (supra), the Hon'ble Supreme Court held that delay deprives of the remedy available and if the remedy is lost the right also is lost. Further reliance is placed on **S.S. Rathore vs. State of MP**, AIR 1990 SC 10, to contend that an aggrieved person must approach the court for relief within one year if no representation/appeal has been filed and six months after if an

appeal/representation has been preferred and filing of continuous representation/reminders does not revive the period of limitation.

6. On merits, state that from the advertisement (supra), it is clear that it was only to fill up the post of Asstt. Teachers, TGTs and PGTs. The applications were invited from eligible candidates. However, it was inadvertently mentioned in the said advertisement that candidates for the post of PGT will have to appear in one of the following subject from Sl.No.(i) to (xxii). As such, HM (Middle), i.e., subject at Sl.No.(xxi) was mentioned wrongly. Applicant had applied for the post of H.M. (Middle) (post Code P-3) as one of the subject to appear for examination. It was clearly mentioned that P-3 Code was for the post of PGT, therefore, it is clear that no post of HM (Middle) was published/advertised. It is further submitted that all candidates had appeared for the post of PGT and not for the post of HM (Middle). That admit card also shows that candidates appeared for the post of PGT and whereby H.M. (Middle) code 316 was mentioned as subject to appear. No candidate was considered for the post of H.M. (Middle). Moreover, the post of HM (Middle) was transferred from MCD to Directorate of Education and was called Special Cadre. As per RRs, the post of HM (Middle) is a promotional post from TGT/LTs, there is no provision in RRs for direct recruitment to the post of HM (Middle). Since applicant wrongly applied for the post of HM (Middle) and mentioned the post Code of PGT i.e. P-3, he was provisionally allowed to appear in written examination for the post of PGT. Later on, vide office Memorandum dated 11.1.1992 vide which applicant was asked to appear in person on 15.1.1992 alongwith his certificates etc. in order to prepare a merit list, it is clearly mentioned therein that this is with reference to his application form for the post of PGT for

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which he was allowed provisionally, to appear. Since he was not covered on merits his candidature for the post of PGT could not be considered. Therefore, applicant is hiding the facts that he was provisionally allowed to appear in examination as well as called for verification only for the post of PGT. Since no such post of HM (Middle) was advertised nor any examination was conducted for the post of HM (Middle) by the department, the question of declaring the result for the post of HM (Middle) did not arise.

7. The applicant applied for details under the Right to Information Act, 2005 and the competent authority vide order dated 27.4.2004 informed the applicant that the post of EVGC was deleted. However, post of HM (Middle) was not deleted. The department in clarification vide its order dated 9.9.2005 clarified that :

“HM (Middle) which appeared in the Advt. Dated 7.7.1990 as a subject is a post which was inadvertently not deleted in the corrigendum. However, as per RR for PGTs, HM (Middle) is not a feeder post to the post of PGT.

3. No vacancy for the post of HM (Middle) to be filled up was advertised on 7.7.1990.”

8. In the rejoinder, applicant refuted the contentions of the respondents that the present OA is barred by limitation. It is further stated that respondents themselves have admitted in their letter dated 27.4.2004 (Annexure R-VI) that Directorate of Education had advertised the post of Assistant Teacher, TGTs and PGTs on 7.7.1990 including the post of EVGC and HM (Middle) etc. in the same advertisement dated 7.7.1990. Then the respondents clarified in the same letter that the post of EVGC was deleted whereas the post of HM (Middle) was not deleted by corrigendum published on 12.7.1990. After issuance of the said order, the respondents now cannot say that there was no advertised post of

HM (Middle). By placing reliance on Annexure A-XV to the rejoinder, it is stated that the post of HM (Middle) were vacant at that point of time and were filled by the working PGT which post was treated as interchangeable with the post of HM (Middle).

9. We have heard learned counsel for the parties and perused the material placed on record.

10. The respondents have argued that there has been delay in filing of the present OA and as such, it ought not to be considered. This issue has been dealt with in RA No.312/2004 in OA 904/1993 decided on 22.7.2005, wherein it has been held as follows:-

3..... Accordingly, placing reliance on a decision of the Full Bench of this Tribunal in **Nand Lal Nichani and others vs. Union of India and others**, CAT FBJ 1989-1991 Vol.II 85, it is contended that the Tribunal has power to condone the delay on a sufficient cause. Accordingly it is stated by resorting to the decision of the Apex Court in the case of State of Bihar and others vs. Kameshwar Prasad Singh and others, JT 2000 (5) SC 389, that on prevent miscarriage of justice, on the explanation which does not smack malafide, Court should invariably condone the delay.

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5. On going through the rival contentions of the parties, it is no more res integra that this Tribunal has power to condone the delay. The decision of the Full Bench (supra) is binding on us."

11. Now coming to the merits of the case, it is seen that the applicant has established inclusion of post of H.M. (Middle) by showing relevant stipulation in the advertisement. In the order dated 27.4.2004 passed by respondents also shows inclusion of H.M. (Middle) in the advertisement issued on 7.7.1990. However, the respondents claim that a corrigendum in this case was issued on 12.7.1990 relevant portions of which reads as follows:-

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"In partial modification of the advertisement for the recruitment of the teachers in Delhi Admn., appeared in this paper on 7.7.90, the following amendments may be noted:-

"....

- (6) Item No.20 E.V.G.C. with Code No. 307 is deleted.
- (7) For P.G.T. the recruitment of 45% marks in Graduation level is deleted.
- (8) The application already submitted for T.G.T. (Sanskrit) General Category and T.G.T. (Physical Science/Natural Sciences in female general category) may be treated as cancelled.
- (9) Other condition of eligibility for various posts will remain the same."

In this modification, inadvertently H.M. (Middle) at Sl No.316 was not deleted as a subject. It is seen that this was only a vacancy within a category of P.G.T. Applicant possibly understood this since he has averred that he made enquiries and received verbal assurances. Applicant had been allowed to appear in the selection process. The fact that he had applied against subject H.M. (Middle) incorrectly and this was clarified in a letter issued to him on 11.1.1992 while asking him to appear in an interview. This was done in the spirit of giving the applicant an opportunity for a final selection within the due process. It is not incumbent upon applicant to hold that he ought not to have called for interview and to appear before the respondents if he was not to be declared successful; and that appointment letter should have been given to him thereafter.

12. His insistence on the fact that he has applied for the post of H.M. (Middle) and he must be taken on the said post is not a correct stand. Applicant had applied within the category of P 3 i.e. P.G.T. and offered history as his subject, a valid choice within the advertisement. A corrigendum had moreover been issued and he

Hence, his claim that verbal assurances were given to him in a positive manner do not hold water. Since he is working within the system, he ought to have known that he has applied with a category of P-3 and not for specific post of H.M. (Middle). Anyway, a mistake made by another will not automatically vest him with right, as concept of negative equality has no place under Article 14 of the Constitution of India.

13. In view of the above, we hold that this OA has no merit and is accordingly dismissed. No costs.

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(Mrs. Neena Ranjan)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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