

OA No. 291/566/2015

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/566/2015

Order reserved on 16.03.2021

DATE OF ORDER: 19.03.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Mahesh Goura Son of Shri Balu Ram Goura, aged about 40 years, resident of 71/111, Patel Marg, Mansarover, Jaipur and presently working as Trained Graduate Teacher-Math (TGT-Math), Kendriya Vidyalaya No. 5, Mansarover, Jaipur.

....Applicant

Shri C.B. Sharma, counsel for applicant.

VERSUS

1. Kendriya Vidyalaya Sangathan through its Joint Commissioner, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110602.
2. Deputy Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, 92, Gandhi Nagar Marg, Bajaj Nagar, Jaipur-302015.
3. Principal, Kendriya Vidyalaya No. 5, Mansarover, Jaipur.

....Respondents

Shri Hawa Singh, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "i) That respondents may be directed to promote the applicant to the post of Post Graduate Teacher-Physics (PGT-Physics) in pay band Rs. 9300-34800 with grade pay Rs. 4800 from the date juniors in the merit have been promoted by quashing memo dated 12/03/2015 (Annexure-A/1) qua applicant treating him as not eligible at S. No. 275 and to issue promotion orders in respect of applicant with all consequential benefits.

OR

As a alternate memo dated 12/03/2015 (Annexure A/1) be modified in respect of applicant to the extent of treating as eligible by deleting word "not eligible" and to allow promotion with place of posting with all consequential benefits.

- (ii) That respondents be further directed to modify eligibility dated as 01/01/2012, 01/01/2013 and 01/01/2014 or dated of notification i.e. 15/07/2014 in notification dated 15/07/2014 (Annexure-A/2), instead of 01/01/2012 and 01/01/2013 as vacancies for the year 2014 have been included and to treat the applicant as eligible at the time of promotion by quashing letter dated 17/06/2015 (Annexure-A/13) with all consequential benefits.
- (iii) Any other order/directions of relief may be granted in favour of the applicant which

may be deemed just and proper under the facts and circumstances of this case.

- (iv) That the costs of this application may be awarded."

2. The brief facts of the case, as stated by the applicant, are that he was appointed as Trained Graduate Teacher-Math (TGT-Math) on 06.09.2003 and thereafter he has worked at several places and presently he is working as TGT-Maths in Kendriya Vidyalaya No. 5, Mansarovar, Jaipur. The Respondents-Sangathan have issued revised recruitment rules vide Memo dated 13.07.2012 (Annexure A/3) for teaching posts and for the post of Post Graduate Teacher (PGT) by way of Limited Departmental Examination (LDE). The applicant has passed Master Degree in Physics subject and he was issued a certificate vide letter dated 24.06.2013 though the result of the course was declared on 23.04.2013. The respondents had issued a notification dated 15.07.2014 for filling up teaching and non-teaching posts by way of LDE for the year 2012-13 and 2013-14 showing eligibility as on 01.01.2012 and 01.01.2013, whereas vacancies notified for the year 2012-13, there were 66 posts for Physics subject and

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for the year 2013-14, there were 48 posts, to be filled. In pursuance to the said notification, the applicant applied for PGT in Physics subject and the respondents after considering the applicant as eligible for both the years allowed him to appear in the written examination held on 14.09.2014. The applicant secured 89 marks out of 150 against 60 marks shown as cut off marks for PGT-Physics for the year 2012-13 and 74 marks for the year 2013-14 (Annexure A/8). Against the name of the applicant, the respondents have shown as 'ineligible' for promotion without assigning any reason in spite of the fact that vacancies were notified for the year 2013-14 and that the respondents had allowed promotions to other candidates vide Memo dated 12.03.2015 (Annexure A/1). The respondents did not mention any reason for treating him 'ineligible' for promotion, therefore, the applicant made a request to them on 10.06.2015 asking them to treat him as eligible. The request of the applicant was forwarded by respondent No. 3 to respondent No. 2 and the respondent No. 2 informed respondent No. 3 vide letter dated 17.06.2015 that the applicant had obtained degree in Physics on 23.04.2013 and, therefore, he was not

found eligible for promotion for the year 2013-14. The applicant further states that in spite of the fact that against the vacancies for the year 2013-14, the applicant should have been considered as he was fully eligible, therefore, he could have been easily considered for the vacancies for the year 2013-14. It is the case of the applicant that though the applicant was eligible but the respondents without any base fixed the eligibility date of 01.01.2014 and, therefore, such action of the respondents is arbitrary, illegal and unjustified, which is completely against the guidelines and instructions of KVS in connection with promotion through LDE to the post of PGT. Thus, he was compelled to approach this Tribunal for redressal of his grievances.

3. The respondents, in reply, have stated that they had issued a notification dated 15.07.2014 for filling up various teaching and non-teaching posts including the posts of PGT-Physics in the respondents-organization through LDE for filling up the vacancies for the year 2012-13 and 2013-14 for the post of PGT-Physics. There were 66 vacancies for the year 2012-13 and 48 vacancies for the year 2013-14. The

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applicant was allowed to appear in the written examination held on 14.09.2014 by issuing admit card and he had secured 89 marks out of 150 and the cut off marks were 74. The applicant has challenged the Memo dated 12.03.2015 by which he had been denied promotion to the post of PGT-Physics as he was found not eligible for the post of PGT-Physics as he earned a degree of Post-Graduation in Physics on 23.04.2013. The notification dated 15.07.2014 clearly mentioned that the crucial date of eligibility for the year 2012-13 and 2013-14 will be 01.01.2012 and 01.01.2013, respectively. It was further mentioned in the said notification that the feeder post, promotional posts, educational qualification and eligibility criteria for various posts shall be as per the Recruitment Rules (RR) in vogue for the vacancies which are to be filled. It was further clarified in notification that mere submission of online application will not confer any right to appear in the written examination. That candidature of the applicant may be cancelled at any stage, even after conduct of examination and placement of posting order if found that the particulars filled by the candidate are incorrect or he/she is not eligible for the post as per RR of KVS.

The candidature of the applicant was rightly rejected for the post of PGT-Physics through LDE as he had acquired the degree of Post-Graduation on 23.04.2013 which does not fulfil the eligibility on the crucial date i.e. 01.01.2012 for the year 2012-13 and 01.01.2013 for the year 2013-14. In other words, the candidate must have acquired the degree of Post-Graduation on or before 01.01.2012 for being eligible for the post of PGT-Physics for the year 2012-13 and on or before 01.01.2013 for the year 2013-14. In view of the above, the applicant was not found eligible for the said post and, therefore, he is not entitled to any relief as claimed by him in the O.A. for the reason that he does not fulfil the condition of eligibility as required for the post of PGT-Physics on a given date.

4. The applicant has filed a rejoinder denying the contentions raised by the respondents. The applicant stated that it was after due consideration vide letter dated 08.08.2014, respondent No. 3 forwarded the online applications to the respondent No. 2 showing eligible teaching and non-teaching employees of Vidyalaya in which name of the applicant finds place at Sl. No. 12 and, therefore, it is unfair on the part of

the respondents to state that the applicant was not eligible for the year 2013-14. It is highly unfair on the part of the respondents to reject the candidature of the applicant treating him as ineligible at the time of issuance of promotion orders on the ground that he acquired the degree of Master in Physics on 23.04.2013 and that he does not fulfil eligibility as on 01.01.2012 and 01.01.2013. Therefore, as the action of the respondents is totally unjustified, the applicant prays that the present O.A. deserves to be allowed and that he be granted the relief as prayed for by him.

5. Heard learned counsels for the parties and perused the material available on record.

6. Besides reiterating the facts, the applicant stated that as the applicant was having three years regular services as TGT, he was allowed to appear in the LDE for the post of PGT-Physics from the post of TGT treating him as eligible taking into consideration his qualification and also taking into consideration the marks obtained by him. Thus it was clear that he was fully entitled for promotion. It is further stated that the respondents notified vacancies for the year 2012-

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13 and 2013-14 fixing the eligibility date as 01.01.2012 and 01.01.2013, which are against the procedure as the respondents have included the vacancies for the year 2014 and, therefore, the eligibility date should have been shown as 01.01.2014. As there are several posts of PGT-Physics which are lying vacant including the vacancies for the year 2014 against which the applicant is fully entitled for promotion, therefore, denial of promotion to the applicant is completely arbitrary and, thus, such action of the respondents is liable to be quashed and set aside.

7. The respondents, on the other hand, reiterated the submissions made earlier and further stated that the applicant himself has gone through the online application form which clearly states as under: -

- "1. I have read the provisions given in the advertisement.
2. All statements made and information given by me in the application are true, complete and correct to the best of my knowledge and belief. In the event of any information or part of it being found false or incorrect before or after the examination / interview or appointment action can be taken against me by the KVS and my candidature /

appointment shall automatically stand cancelled / repatriated / terminated.

3. I further declare that I fulfilling all the conditions of eligibility regarding age, educational, professional/ teaching qualification etc. prescribed for the posts applied."

Thus, it cannot be said that after going through the said online application form and after having participated in the said examination, the applicant cannot find fault in the criteria to be adopted for the said selection as it was already clarified in the notification dated 15.07.2014. Therefore it is an unnecessary excuse on part of the Applicant to raise the allegations merely because he was not eligible as per the criteria mentioned. It is also highly unjust on the part of the Applicant to state that the cut off date of eligibility should not have been 01.01.2012 for the year 2012-13 and 01.01.2013 for the year 2013-14. It is very clear that the applicant has acquired the degree of Post-Graduation only on 23.04.2013 and, therefore, it is very clear that he does not fulfil the eligibility on the crucial date i.e. 01.01.2012 for the year 2012-13 and 01.01.2013 for the year 2013-14. The action of the respondents, therefore, cannot be said to be illegal, arbitrary or unreasonable as the

same was already clarified by the respondents in their notification dated 15.07.2014. Therefore, the applicant is not entitled to any relief as it is very clear that he does not fulfil the condition of eligibility for the post of PGT-Physics on the cut off date i.e. 01.01.2012 as well as 01.01.2013.

8. The question which requires to be considered in the present case is whether the applicant has to be treated as eligible in the LDE held for the year 2012-13 and 2013-14 where the crucial date of eligibility for the year 2012-13 and 2013-14 was 01.01.2012 and 01.01.2013, respectively, though he has acquired the degree of Masters in Physics as on 23.04.2013.

9. The factual matrix of the case is that as per the notification dated 15.07.2014, the applicant had applied for the post of PGT-Physics, and the posts were to be filled up by way of LDE for the year 2012-13 and 2013-14. He had appeared for the written examination being treated as eligible and has obtained marks more than the cut off marks. As per the notification dated 15.07.2014, the conditions laid down in the said notification were very clear. The

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crucial date of eligibility for the year 2012-13 and 2013-14 were clearly mentioned as 01.01.2012 and 01.01.2013, respectively. It was also clearly stated that the candidature of the applicant may be cancelled at any stage, even after conduct of examination and placement of posting order if found that the particulars filled by candidate are incorrect or he/she is not eligible for the post as per RR of KVS. It was also clarified that mere submission of online application will not confer any right to appear in the written examination. After going through the details and filling the online application form with open eyes, the applicant having participated in the said examination, cannot state that he should have been treated as eligible when the crucial date of eligibility for the year 2012-13 and 2013-14 was clearly mentioned in the said notification as 01.01.2012 and 01.01.2013, respectively. Therefore, it is very clear that the action of the respondents cannot be said to be illegal, arbitrary and violation of any rules or violation of constitutional rights of the applicant.

10. There are several judgments of the Hon'ble Apex Court on the issue that once having participated in the

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Selection process cannot turn around and challenge the same. Principle of estoppel and acquiescence comes into account. It is very clear that a person who has acceded to a position and participated in the process cannot be permitted to approbate and reprobate. The said view has been taken by the Hon'ble Apex Court in the case of **Nitesh Kumar Pandey vs. State of Madhya Pradesh & Ors.**, reported in (2020) 4 SCC 70. Similar view has been taken in the case of **Anupal Singh & Ors. vs. State of U.P. through Principal Secretary, Personnel Department & Ors.**, reported in (2020) 2 SCC 173. It is, therefore, clear that in an examination having participated then a candidate cannot find fault in the said examination when he/she was completely aware about the rules of the examination and, therefore, it is very clear that the respondents have not committed any error in finding the applicant ineligible for the said examination. Thus, we are of the considered view that there deserves no interference in the orders passed by the respondents as the impugned order dated 12.03.2015 (Annexure A/1) is totally just and proper.

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11. In view of the observations made above, there is no merit in the Original Application filed by the applicant and the applicant is not entitled for any relief claimed therein. Accordingly, the present Original Application is dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat