

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A./I.N.No. 635 of 1990

DATE OF DECISION 27.5.96

Chandra Mohan PETITIONER(S)

CA Sri Sudhir Agrawal ADVOCATE FOR
THE PETITIONER(S)

VERSUS

Union of India & others RESPONDENTS

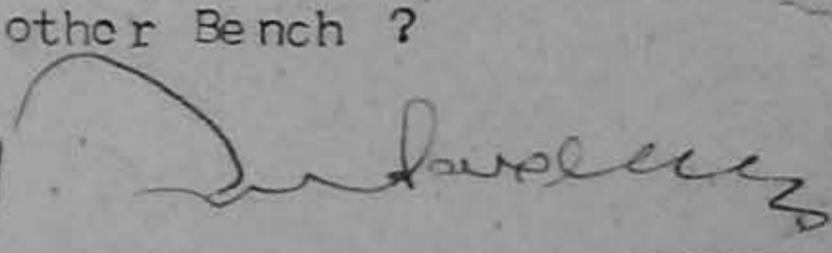
Mr. Ashok Mohan ADVOCATE FOR THE
RESPONDENT(S)

Q. O. R. A. M. :-

The Hon'ble Mr. Dr. R.K. Saxena Member (J)

The Hon'ble Mr. Mr D.S. Bawali Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?



(SIGNATURE)

V.K.P/-

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 635 of 1990

Allahabad this the 27th day of March 1996

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Chandra Mohan, A/a 37 years S/o Sri N.L. Singh, Non
LT Teacher Ordnance Factory Intermediate College,
Armapur, Kanpur.

APPLICANT.

By Advocate Sri Sudhir Agrawal.

Versus

1. The Union of India, through the Secretary to Government
Ministry of Defence, New Delhi.
2. The DGOF/Chairman, Ordnance Factory Board, 10-Auckland
Road, Calcutta.
3. The General Manager, Ordnance Factory, Kanpur.
4. Sri Ashok Kumar Singh, Non LT Teacher(HSS) Ordnance
Factory, Kanpur, NI School Establishment, Armapur,
Kanpur.

RESPONDENTS.

By Advocate Sri Ashok Mohiley.

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

The applicant has come to the Tribunal to
challenge the order dated 02.12.1988(Annexure A-1)
whereby the respondent no.4 has been appointed as
Non-Language-Teacher(H.S.S.) in the Ordnance Factory,
Kanpur and also sought issuance of mandamus to the

:: 2 ::

respondents to make appointment to the post of Non-Language Teacher(H.S.S.) for teaching Science subject to Class 11th and 12th of Non-Industrial Establishment School, Ordnance Factory, Armapur, Kanpur, in accordance with the law.

2. The brief facts of the case are that the Ordnance Factory, Kanpur has Non-Industrial Establishment School of the level of Intermediate College. It is recognised by the U.P. Intermediate Education Board. There were certain vacancies in the college and to fill up those vacancies, applications were invited through notice dated 12.8.88(annexure A-2). According to this notice, there were 5 vacancies of language/non-language teachers for the class 11th and 12th. Of these vacancies, one vacancy was existing in each subject of Chemistry, Mathematics, Biology, English, Economics, and Political Science. The essential qualifications were that the applicant must be holding Second Class Master's Degree in the subject concerned from the recognised university, ~~degree~~ or Post Graduate Diploma in teaching/education, and atleast 3 years experience of teaching of Higher Secondary Classes. The desirable ~~qualification~~ was that he should be competent to teach the subject in English and regional language.

3. It appears that the applicant-Chandra Mohan as well as the respondent no.4-Lr. Ashok Kr. Singh applied for the post of Biology teacher. The name of the respondent no.4 was also sponsored by

:: 3 ::

the University Employment Bureau, Kanpur alongwith other candidates. The test/interview for the candidates was held on 02.11.88 and 03.11.88. The interview was taken by a Committee consisting of the Principal and Senior Officers. Dr. A.K. Singh (respondent no. 4) was found suitable and was placed at serial no.1 and the applicant Chandra Mohan was also found suitable but, he was placed at serial no.2 in order of merit. Since there was only one vacancy ~~yearmarked~~ for the subject of Biology, respondent no.4 who was empanelled at serial no.1, was appointed w.e.f. 19.11.88. The appointment was on probation for the period of 2 years. Since the applicant Sri Chandra Mohan could not be given appointment, he made an appeal on 30.1.89. On the presentation of the appeal, the inquiry regarding teaching experience of Dr. A.K. Singh ^{also} was made from the Institutions of which certificates were produced.

4. The contention of the applicant in the case is that the respondent no.4 did not possess the requisite essential qualification particularly the experience which was needed and, therefore, his appointment was quite illegal.

5. The O.A. has been resisted on behalf of the respondents. One counter-reply has been filed by Sri A.K. Naik, Assistant Works Manager, Ordnance Factory, one supplementary counter-reply was filed by Sri B.P. Misra, Works Manager(Admn.), Ordnance

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Factory, Kanpur and third counter-reply was filed by Dr. Ashok Kumar Singh, - respondent no.4. In the counter-reply of Sri A.K. Naik, it has been mentioned that in the year 1988, process for recruitment for filling up vacancies of Non-Language Teachers (H.S.S./I.C.) falling under direct recruitment quota, was started. It is admitted that Dr. A.K. Singh was one of the candidates. He had filed documents showing the essential qualification including that of his experience. It is also averred that Dr. A.K. Singh taught Higher Secondary classes (Literary Group) and also held Science classes privately. The S.H.O. no.484 dated 12.8.77 did not mention specifically that teaching experience should be of a specific period and in a particular subject. The teaching or imparting lessons to the students is a technique/method which is required to be seen irrespective of the subject which was taught. It is also pointed out that instances were that the teachers of other than Science subjects, were teaching ^{other} ₂ subjects and vice-versa. The names of S/Sri S.N. Lal and L.S. Sengar have been quoted. It is admitted that the Selection Board had placed Dr. A.K. Singh at serial no.1 while Sri Chandra Mohan - the applicant was placed at serial no.2. Since, there was only one vacancy earmarked for the subject of Biology, Dr. A.K. Singh - respondent no.4 who was at serial no.1 in the panel, was given appointment. The verification of the experience was made not only from the documents brought on record by Dr. A.K. Singh but also by calling relevant information from different sources when the matter was challenged by the applicant in appeal and ^{through} ₂ representations.

6, Sri B.P. Misra who had filed the supplementary counter-reply has averred that the matter was considered by the Ordnance Factory Board and Ministry of Defence and referred the matter of appointment of Dr. A.K. Singh for approval by the Ministry which was done by the letter dated 10.9.92 annexure S.C.A.-1. As a result of that approval, the controversy was set at rest. It is also stated in para 8 of the counter-reply of Sri B.P. Misra that in case Chandra Mohan-the applicant who stood second in the merit list, had sought relaxation as was done in the case of respondent no.4, he (the applicant) would have been granted the relaxation in the S.R.O. accordingly.

7. Dr. A.K. Singh - respondent no.4 had filed the detailed counter-reply disclosing the background of the applicant. It has been contended that the applicant was working as L.D.C. since 1976 in the Ordnance Factory Inter College. He sought permission to appear in M.Sc. Zoology in the year 1981 and 1982. He was granted permission to appear in M.Sc. examination as a private candidate without interference in his normal duties. According to him, the applicant managed to be a regular student and thus, he got M.Sc. degree as a regular student which was contrary to the condition of permission accorded to him. It is pointed out that he could not appear as a regular student because the teaching hours of M.Sc. previous and M.Sc. final clashed with the duty hours of the applicant. His conclusion, therefore, is that the applicant had played fraud

and obtained degree. As regards his own case, his reply is that wrong and baseless points for not having acquired experience, were raised in the O.A. It is averred that the respondent no.3 after having satisfied about the essential qualifications of the respondent no.4(Dr.A.K. Singh) he was given appointment which was quite legal and valid. As regards experience, it is stated, that he (respondent no.4) had taught the students in Higher Secondary School, Deoli, Distt. Ballia, K.V.No.1, A.F.S.(Chakeri), Kanpur and L.B.S. College, Kanpur and the total experience of all these three places is more than what is required as essential qualification. It is also averred that similar question had arisen in O.A.264/91 of Ashok Kr. Sharma Vs. Union of India and Others decided by this Bench on 28.8.95 by Judgment(Annexure C.A.-4).

8. The applicant filed rejoinder, reiterating the facts which were mentioned in the O.A.

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

10. The main question in this case is whether the appointment of respondent no.4, as Biology teacher, was legal and valid. There is no dispute that applications for certain posts which were designated as Language/Non-Language teachers, were invited and the applicant as well as the respondent no.4 besides others were candidates. It appears that the applicant was serving in this college from before while respondent no.4 was a

direct recruitee. On the basis of the interview, the respondent no.4 was placed at serial no.1 and the applicant at serial no.2. As there was only one vacancy of a teacher in the subject of Biology, the respondent no.4 was given appointment and from here started the dispute between the applicant vis-a-vis the respondents.

11. Before we deal with the factual controversy whether the respondent no.4 possessed the essential qualification, we would like to go through those essential qualifications. The notice Annexure A-2 which was issued filling up the vacancies is based on S.H.O.no.199 which has been brought on record through Annexure C.A.-7. This S.H.O. 199 deals with the rules which are called the Ordnance Factories Organisation (Group A, B and C posts of School Establishment) Recruitment Rules, 1976(hereinafter referred as Rules). These rules are applicable to the posts which have been specified in Column 1 of the Schedule. It appears from the perusal of the Schedule that Language/Non-Language teachers of Higher Secondary/Inter College (Classes XIth and XIIth) were required to possess Second Class Master's degree in the concerned subject, a degree or post-graduate diploma in teaching/education; and atleast 3 years experience in teaching of Higher Secondary classes. These qualifications were described as essential qualifications. The desirable qualification was competence to teach the subject both in English and

Reasonal language. Rule 3 of these rules deals with the post, classification and scale of pay whereas rule 4 mentions the method of recruitment age limit, qualifications etc. Rule 5 deals with disqualification which is concerned with marriage. Rule 6 speaks of power to relax for the purpose of this decision, interpretation of this rule would be necessary and, therefore, we are ^{reproducing} ~~produced~~ this rule in extenso;

^a6

— Power to relax - Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the U.P.S.C., whenever necessary, relax any of the provision of these rules with respect of any class or category of person or posts.*

Rule 7 is Saving Rule and deals with reservation and other concessions which are required to be provided to the candidates belonging to such caste or classes.

12. The perusal of the rules, therefore, gives a clear picture about the essential qualifications and desirable qualifications. It is also evident that the Central Government had the power to relax any of the provisions. The main controversy in this case is whether the respondents no.4 had the teaching experience of Higher Secondary Classes of 3 years. According to the applicant, the respondent no.4 did not have that experience because he had either taught ⁱⁿ students of B.Sc., M.Sc. or he had taught the Higher Secondary School, ^{only} the subject other than the

Science. As a matter of fact the applicant disputed even that experience should at all be counted because according to him he was not a regularly appointed teacher in Higher Secondary School, Deoli, Distt. Ballia but was teaching without any remuneration. His contention, therefore, is that the period of experience of Deoli Higher Secondary School and that of D.V.S. College, Kanpur be excluded.

13. The respondents particularly respondent no.4, on the other hand, contended that Dr. A.K. Singh had the requisite experience because he had worked for the period from September, 1978 to October, 1980 in Higher Secondary School, Deoli. It is further averred that the respondent no.4 while working as Research Scholar was ~~interested~~^{entitled} to the job of teaching B.Sc., M.Sc. classes during the period 1980-81 and 1981-82. It is mentioned that in accordance with the terms and conditions, a research scholar could be required to assist the department in teaching and other provisional work. As regards the experience of Kendriya Vidyalaya, Chakeri, it is contended that he had worked as ad-hoc T.G.T. (Science) w.e.f. 17.8.82 to 30.4.83. The certificates in support of this experience were produced by the respondent no.1 and on the verification thereof, he was finally selected.

14. Learned counsel for the applicant placed reliance on the letter dated 24.10.90 annexure no.1 to rejoinder in which certain clarifications were made with respect to S.R.O.199. In para 2(b to g),

the clarification as regards experience has been mentioned. It reads: (b) the experience required for different categories of Teachers should be experience in teaching ~~in~~ classes for which they are to be recruited. For example, for recruitment of H.S.S. teachers, experience in teaching in classes XI and XII only will be essential. Similarly for H.S. teachers experience in teaching in Classes VI to X only will be relevant. The experience in pre-primary classes cannot be counted for selection of teaching experience only in primary classes.

(c) The teaching experience of the subject for which recruitment is to be made alone is to be taken into account.

(d) Teaching experience of recognised schools only will be considered. For example, teaching experience of XIth and XIIth Standard from a School which is recognised upto Xth Standard cannot be taken into account.

(e) Teaching experience of Higher classes like B.A./B.Sc./M.A./M.Sc. will also not be relevant.

(f) Experience acquired in teaching on part time basis or in honorary capacity cannot be reckoned as meeting the prescribed condition of experience.

(g) Experience before acquiring the relevant qualification also cannot be considered."

15. ¹⁹⁹ It may be noted that this clarification is given ^{the} date of 24.10.90 whereas the appointment of the respondent no.4 was made on 02.12.1988. It will mean that this clarification was not in existence and because some confusion in the interpretation of S.R.O.199, was in the mind of concerned authorities and, therefore, this clarification was necessitated.

11

The question, however, arise if this clarification should be given retrospective effect. Our answer to this question is in negative. If the experience is going to be explained by such a lengthy circular as annexure-1 to rejoinder, it cannot be said that this interpretation should have been accepted right from the ~~inception~~ of S.R.O. 199. When we try to construe the meaning of experience which was given in the Schedule of S.R.O. 199 dated 23.4.77 annexure C.A.-7, we clearly find that these details of experience can never be interpreted. The only requirement was that for appointment of Language/Non-Language teachers in Higher Secondary/Inter College, the experience was of 3 years in teaching of Higher Secondary classes. There was no indication that teaching experience after holding the honorary post, shall be ~~excluded~~ or the teaching of a different subject shall not be counted if appointment is sought in the subject different from what was ~~taught~~. What appears that the teaching experience before it was clarified, required that the appointee should be in a position to acquit himself before the students. In other words, the technique or method of teaching must have been adopted in a manner that the students may understand quickly. In this way, the experience as it stood in S.R.O. 199 prior to 24.10.90 did not include all those conditions which have now been inserted by clarification of 24.10.90. We are, therefore, of the view that these impediments of experience cannot be put in the year 1988 when the respondent no.4 was given appointment. Looking to the Period of experience

:: 12 ::

we are convinced that the decision taken by the Selection Committee about the respondent no.4 having acquired necessary experience, was correct and no interference is needed.

16. Assuming for a moment that there was some confusion and the appointment of respondent no.4 could be made only after the rules were relaxed, we find that this exercise was also done by the Government of India. It was the upon that Sri Hukum Chand, Under Secretary to the Government of India, Ministry of Defence mentioned in his letter dated 10.9.92 annexure S.C.A.-1 to Sri B.P. Misra that the appointment of 13 teachers (including the respondent no.4) of the Ordnance Factory Inter College, Kanpur appointed on probation in the year 1988 in terms of Clause 6 of S.R.O. 199, was approved with the stipulation that dispensation was being resorted to as a very special case and it should not be quoted as a precedent in future. In this way, we find that relaxation power was also ~~exercised~~ experienced by the competent authority. In view of these facts, the appointment of respondent no.4 cannot be questioned.

17. On the consideration of the facts and circumstances of the case, we find no merit in the O.A. which is accordingly dismissed. No order as to costs.

D. B. Gupta
Member (Admin.)

D. D. Dutt
Member (Judicial)