

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(13)

O.A. No. 347 OF 1987.

T.A. No. x

DATE OF DECISION 18-6-1992.

Arti Devi Singh, Petitioner

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. N.S. Shevde, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.B. Mahajan, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

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 it needs to be circulated to other Benches of the Tribunal? ✗

Artidevisingh
C/o. V.P. Singh
Quarter No.923/H
Filter Side
Post-Freeland Ganj,
Dahod - 389160.

..... Applicant.

(Advocate: Mr. P.H. Pathak)

Versus.

- 1) Union of India,
Notice to be served through
the Chief Personal Officer,
Churchgate, Bombay.
2. President
Railway Schools & D.P.O.,
Divisional Office,
Ratlam.
3. Smt. Vandana Dashorra
Railway Primary School,
Dahod.
4. Kum. Indravati Mandwariya,
Railway Primary School,
Ratlam.
5. Smt. Rose Mary Alecvictor,
6. Narendrakumar I. Patel.
7. Radheshyam Bandela,
Railway Primary School,
Mhow.
8. Smt. Manorama Mishra.
9. Smt. Sushila Shrivastava,
Both address to
Rly. Primary School,
Ujjain. (M.P.)
10. Smt. Rajni Upadhyay
Rly. Primary School,
Ratlam.
11. Smt. Meena Gaur,
Rly. Primary School,
Ratlam. (Raj.)

..... Respondents.

(Advocate: Mr. N.S. Shevde)

J U D G M E N T

O.A.No. 347 OF 1987

Date: 18-6-1992.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. P.H. Pathak, learned advocate for the applicant and Mr. N.S. Shevde, learned advocate for the respondents.

2. This application under section 19 of the Administrative Tribunals Act, 1985, is filed by the substitute Railway Primary School Assistant Teacher seeking the relief that the marks allocated by the respondents 3 to 11 Selection Committee to the candidates/in Viva voce test be declared as arbitrary and illegal and the 1 & 2 panel declared by the Respondents/on 6th February 1987 be quashed and set aside and that the selection be declared as bad in law on the ground that the candidates who were not qualified and not suitable for primary section ~~WIP~~ selected and posted.

3. The case of the applicant is that she is working in Railway Primary School as an Assistant Primary Teacher at Dahod, that she was called for interview by the respondents that, her earlier appointment was made after due selection that she has been serving as a Assistant Teacher since 1983, that she had appeared in the written test as well as

including Res. No. 3 to 11 oral interview with other candidates. It is alleged that after about two months after her interview, the selection committee has prepared a panel on 6th February, 1987 which was published in which the candidates who were not qualified for Assistant Teacher in the Primary School were included, while the applicant whose performance was very good and was serving since 1983 as Assistant Teacher having requisite qualification of SSC/BTC was left out. The allegation of the applicant is that the whole procedure for selection by the respondents^{1 & 2} was arbitrary and discriminatory and illegal and violation of Article 14 & 16 of the Constitution and the respondents have ignored all the criteria and rules. It is alleged by the applicant that as per the rules framed by the Government, Assistant teacher primary section must be SSC or equivalent qualification with PTC or equivalent certificate and the said policy is decided by the Railway and President the Railway Schools has issued notification vide letter dated 28th June, 1978. It is alleged by the applicant that the respondents have exercised the power in arbitrary manner and without following the statutory rules. It is alleged that for the post of primary teacher PTC or equivalent qualification is must and the respondents while issuing advertisement specifically mentioned this

qualification of SSC/PTC or equivalent against the item of qualification but the Selection Committee ignored this requirement of qualification and exercised the power arbitrarily which resulted in illegality. It is alleged that the respondents with prejudicial mind served the order of termination of service on 6th July 1987. It is alleged that the Selection Board had no details about the applicants or other candidates. It is alleged that when the applicant was continued as substitute assistant teacher for a number of years and when she had all the required qualifications, her termination of service by respondents was illegal and arbitrary specially when the candidates selected by the respondents had no such qualification.

1& 2

4. The respondents have filed reply denying the allegations of the applicant. They have contended that the applicant having taken a fair chance of favourable result in her favour without raising any irregularity in the selection till declaration of result is now estopped by challenging the same. It is contended that the selection was made on the basis of over all merit and the selection board had taken all the relevant consideration into account while selecting the candidates. The respondents have denied that the candidates who were

not possessing the requisite qualifications were selected. It is contended that the applicant was considered by the Selection Board and was replaced by the selected candidates and therefore she could not have any ~~any~~ grievance against the action taken by the respondents. It is contended that no candidates without requisite qualification as required under Para-1 of Annexure 'C' to the application was considered by the Selection Board or empanelled. It is contended that there is no bar in considering the candidates with higher qualification than that all requisite essential qualification. It is contended that the chart produced by the respondents in this case would show that all the relevant entries were placed before the Selection Board and the same has been considered by it. The respondents have denied that the Selection Board was prejudiced against the applicant. Respondents 3 to 11 served but no reply is filed.

5. The applicant has filed rejoinder controverting the contention taken by the ^{1 & 2} respondents in the reply.

6. The learned advocate Mr. Pathak for the applicant has raised two main points in this case. The first point raised by him is that the marks given by the selection committee to the

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candidate under the head of experience was ex facie arbitrary and the second point is that as per the advertisement so long SSC trained teachers were available no other candidates should have been considered and hence higher marks given to the candidates having more academic qualification were not justified when they did not possess required qualification of PTC. He submitted that the Western Railway notification dated 28th June, 1978, Ann.B shows that the qualification required for the Hindi and English primary schools was SSC trained in respective medium of Hindi and English. However, in absence of SSC trained candidates, the application of trained graduate in respective mediums could be considered. He submitted that it is not in dispute that the applicant did possess the requisite qualification of SSC/PTC and she was SSC trained teacher. He also referred to Annexure 'C' produced by the applicant which is a copy of the advertisement for the recruitment for the post of Assistant Teacher and the qualification mentioned for Group A & B i.e. for English medium and Hindi medium Assistant Teachers, was SSC pass or its equivalent examination and should possess primary teachers certificate of Madhya Pradesh, Rajasthan or Uttar Pradesh and that the candidates should have studied in respective medium

English & Hindi from the standard 9 to 11 and previous teaching experience in respective medium was preferred. He submitted that the panel which prepared was / as a result of selection held on 22nd January, 1987 and on 23rd January, 1987 i.e. resp. 3 to 11. said post consisted of 9 candidates. The office order of the said panel is dated 6th February, 1987, vide Ann. D and according to the learned advocate for the applicant candidates shown in the panel did not satisfy the condition / Annexure B & C and therefore the whole selection was bad in law. He submitted that the respondents have produced the chart R-I which is a statement showing number of candidates appearing for selection for the post of Assistant Teachers. He submitted that the applicant's name / at the bottom at Sr. No. 21 which was an act of prejudice. He submitted that except the candidate at Sr. No. 1 Smt. Gangabai Thakur and the applicant whose name was shown at Sr. No. 21 in that chart, others were unqualified. He submitted that the qualifications of each candidate is shown in the column 11 of Ann. R-1 and all the candidates from Sr. No. 2 to 20 do not show that they were SSC trained having PTC certificate as required as per Annexure B & C. He submitted that the applicant was inter BTC meaning thereby that she was SSC

trained. He submitted that it is not in dispute that the applicant meet with the necessary requisite qualifications while the other candidates except at Sr.No.1, though some of them were graduate and some of them had Master degree did not show that they had PTC certificate meaning thereby that they were not SSC trained teachers. The learned advocate for the respondents submitted that the respondents were entitled to consider the candidates having higher academic qualification. However, in our opinion, the question is whether the selection committee was entitled to consider the candidates, who do not possess the required qualifications as per Ann.B&C. The candidates should have been SSC trained in the respective mediums meaning thereby not only that they should have passed SSC or equivalent examination, but they should possess primary teachers certificates. The chart Ann.R-1, Column 11 does not show that respondent No. 3 to 11 who were empanelled possessed that qualification of PTC and therefore there was illegality in empanelling them. In any case, even if they could be considered if no suitable candidates fulfilling the possessed qualification was available, they could not be awarded higher marks for educating qualification than the applicant who fulfilled the possessed qualification.

7. So far the question of allocation of marks in the column of experience is concerned, the

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learned advocate for the applicant drew our attention to the marksheets that the applicant was given 10 marks while one Indra Mandwariya, a candidate at Sr.No.11 was given 12 marks, the other three candidates were also given 12 marks. He submitted that the chart Ann.R-1 produced by the respondents shows that out of 21 candidates, candidate No.4, Rosemary Alec.Victor had worked for 2401 days, candidate at Sr.No.1, Gangabai Thakur had worked for 1038 days and the applicant whose name is at Sr.No.21 had worked 1001 days while all other candidates had worked for the period less than the applicant. He submitted that there is no guideline shown how the selection committee has given the marks under a column of experience and if there is no criteria for the same, there was no reason not to allot 12 marks to the applicant when she had worked for such a long term atleast more than almost other candidates. He also submitted that when she had a requisite qualification she was only given 12 marks under the column 5 while 6 or 7 other candidates who had not that requisite qualification of PTC were given 15 marks. He submitted that the applicant should have been given atleast marks under that head which were given to the candidates who were given 15 marks. He submitted that the school selection procedure of selection committee was against the statutory rules and Ann.B&C and that was the reason why ultimately the applicant was not included in the panel of 9 candidates.

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8. Learned advocate for the respondents relied on the affidavit, of the President of Railway School produced at Ann-R-2 in which he has stated that all the consideration before the selection board were based on the bio-data of candidates furnished in the statement at Ann. R-1 and performance of the candidates before the selection board. The learned advocate for the applicant in reply to this submission of the learned advocate for the respondents submitted that there was no adverse remarks or nothing against the applicant regarding her performance and she is a substitute assistant teacher during her working days of 1001 days and there is nothing on record to show that the selection board had any data before them for putting the marks in column 6 on the subject of experience and therefore the selection board has acted arbitrarily and discriminatory.

9. Having heard the learned advocates, we find that the selection board has committed an error in not considering the required qualification as per the advertisement for the post in question and the marks and 6 allocated under column No.5/ in the chart, Ann.R-1 on the subject of experience was also not put on any rational basis.

10. The learned advocate for the applicant relied on the decision in Mohinder Sain Garg & Ors. v/s. State of Punjab & Ors. (1991) 16 A.T.C., 495, / the Hon'ble Supreme Court held that the selection for Excise and Taxation Inspectors was vitiated on the ground of allocation of excessively high percentage of marks for viva voce test. It was held that even so to quash the entire selection would be doing injustice to those candidates who had already been appointed and had joined the posts long back pursuant to such selection, more so when they had not been impleaded as parites before High Court as well as before Supreme Court. It was held that however those unsuccessful candidates, who had chances of being selected if the marks allocated for viva voce test had been reduced, directed to be appointed to the posts which were kept vacant for them pursuant to earlier interim orders of the Court even if they had become overaged in the meantime. He submitted that in the instant case, the applicant has joined the affected candidates namely the candidates who were empanelled by the respondents vide Ann. D as respondents No. 3 to 11 but they have not cared to contest this application. He submitted that if the marks allocated by a selection committee under the head of experience and academic qualifications to

other candidates had been little less than the applicant or in other words if the marks under those heads were given having regard to the number of days the applicant worked and that she was she would have been selected qualified but due to illegal procedure she has been left out as would be seen from the marks given to all the candidates. However, he submitted that he does not desire that the whole panel should be quashed because by this time those candidates must have been appointed and hence he prayed that the applicant also should be selected and the appointment be given to her. We agree with the submission of the learned advocate for the applicant on this point because, in our opinion also, the respondents who 3 to 11 have been empanelled would be thrown out of job if the whole selection is quashed and hence the proper order would be to direct the Respondent No. 1 & 2 to consider the applicant for appointment as an Assistant Primary Teacher and to take her on that post. If there is no vacancy to that post the respondents No. 1 & 2 may take her as supernumerary teacher. Hence the following order.

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O R D E R

The application is partly allowed. The panel of the selected candidates declared by the respondents on 6th February, 1987 is not quashed

but the respondent No. 1 & 2 are directed to appoint the applicant as Assistant Teacher in Primary School. In case there is no vacancy, the respondents No. 1 & 2 should treat her ^{as} supernumerary teacher. The respondents to comply this order within three months from the receipt of this order. No orders as to costs. Application is disposed of accordingly.



(R.C.Bhatt)
Member (J)



(B.B.Mahajan)
Member (A)

RA/9/93 in OA/347/87
with
MA/252/93

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Date	Office Report	ORDER
15/7/93	HP 15/7	<p>ORAL ORDER PRONOUNCED IN OPEN COURT.</p> <p>APPLICANT AND RESPONDENT HEARD LEARNED ADVOCATE FOR THE APPLICANT AND RESPONDENT</p> <p>ORAL ORDER PRONOUNCED IN OPEN COURT.</p> <p><u>M.R.Kolathkar</u> (M.R.Kolathkar) member(CA)</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(28)

R.A./9/93 in

O.A. No. /347/87 with M.A./252/93
T.A. No.

DATE OF DECISION 15th July, 1993.

Union of India & others.

Petitioner (original respondents)

Mr. N.S. Shevde

Advocate for the Petitioner(s)

Versus

Smt. Artidevi Singh & others.

Respondent (original applicants)

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.R. Kolhatkar

: Administrative Member.

The Hon'ble Mr.

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 it needs to be circulated to other Benches of the Tribunal ?

1. Union of India through
Chief Personnel Officer,
Western Railway,
Churchgate,
Bombay-400 020
2. President, Railway Schools &
Divisional Personnel Officer,
Divisional Office,
Ratlam.

.....Applicants.

(Original respondents
No 1 and 2)

Advocate : Mr.N.S.Shevde

versus

1. Smt.Artidevi Singh,
C/o,V.P.Singh,
quarter no.923/H,Fitter Side,
Post-Freelandganj,
Dahod-389060
2. Smt.Vandana Dashorra,
Railway Primary School,
Dajod-389060
3. Kum.Indravati Mandwariya,
Railway Primary School,
Ratlam.
4. Smt.Rose Mary Alec Victor,
5. Harendrakumar I.Patel,
6. Radheshyam Bandalal,
Railway Primery School,
Mhow.
7. Smt.Manorama Mishra.
8. Smt.Sushila Shrivas,
Both address to
Railway Primary School,
Ujjain.(M.P.)
9. Smt.Rajni Upadhyay,
Railway Primary School,
Ratlam.
- 10.Smt.Meena Caur,
Railway Primary School,
Ratlam.

....Opponents.

(No. 1 original applicant.
No.2 to 10 original respondents.)

ORAL JUDGEMENT

R.A./9/93 in

O.A./347/87 with

M.A./252/93

Date : 15/7/93

Per : Hon'ble Shri M.R.Kolhatkar,
Administrative Member.

Mr.N.S.Shevde points out that
the application for permission to withdraw the Review
Application has been pending. Application for withdrawal
is allowed. Hence, M.A. and R.A. stand disposed of
accordingly.

M.R.Kolhatkar
(M.R.Kolhatkar)
Administrative Member.

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