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CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH AT JODHPUR

Original Application Nos. 185 & 186/2009

Dated this the 13th day of December, 2011

CORAM

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

O.A. 185/2009:

Din Dayal Bairwa, S/o Sita Ramji Bairwa,
Resident of Diesel Shed Road, Gandhi Nagar,
Abu Road, District Sirohi,
Presently working as Head Master at Railway
Primary School, (Hindi Medium)
Abu Road, District Sirohi, North Western Railway.
...Applicant

(By Advocate Mr. Arjun Purohit)

Vs.

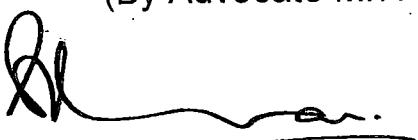
1. Union of India through General Manager,
(Personnel) North Western Railway, Jaipur.
2. Divisional Railway Manager (Personnel)
North Western Railway, Ajmer.
3. Principal, Railway Senior Secondary School,
Abu Road, District Sirohi, North Western Railway.
...Respondents

(By Advocate Mr. Manoj Bhandari)

OA 186/2009

Raj Kumar Bairwa S/o Prabhati Lalji Bairwa,
Resident of Diesel Shed Road,
Gandhi Nagar, Abu Road, District Sirohi,
Presently working as Craft Teacher at
Railway Senior Secondary School, Abu Road, District Sirohi,
North Western Railway. ...Applicant

(By Advocate Mr. Arjun Purohit)



Vs.

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1. Union of India through, General Manager, (Personnel) North Western Railway, Jaipur.
2. Divisional Railway Manager (Personnel) North Western Railway, Ajmer.
3. Principal, Railway Senior Secondary School, Abu Road, District Sirohi, North Western Railway.
... Respondents

(By Advocate Mr. Salil Trivedi)

O R D E R

Per Sudhir Kumar, Administrative Member

Both these O.As have been filed by the respective applicants assailing the same/common impugned orders, and, therefore, they came to be heard together, and are being disposed of through a common order.

OA 185/2009

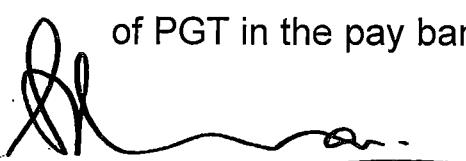
(2) The applicant of this OA passed his BA in 1996, B.Ed in 1998, and MA in Hindi in the year 2008. He was initially appointed as a Primary School Teacher in the pay scale of Rs. 1200-2040 (4500-7000) through the establishment notice dated 20.12.2000 in the Education Department of the respondent authorities (Annexure.A/4).

(3) After his having put in nearly 7 1/2 years of service, through Annexure.A/5 dated 22.5.2008, the respondents placed him in the select list for the post of Head Master (Hindi Medium) in the pay scale of Rs. 5500-9000. His placement in the select list was



followed within two months ³ by the order dated 21.7.2008 (Annexure.A/6) giving him substantive promotion with transfer, posting him as Head Master, Hindi Medium, at the Railway Primary School (Hindi Medium), Abu Road, against the vacant position there.

(4) While working on the post of Head Master, he applied for selection for promotion to the post of Post Graduate Teacher in Hindi, which vacancy was notified through the Circular dated 06.04.2009 (Annexure.A/7). His name was duly included in the notification dated 14.7.2009 (Annexure.A/8) as one of the eligible candidates. However, the written examination scheduled for such promotion on 9.8.2009 was postponed (only in respect of the post of PGT Hindi), and it was ordered through letter dated 7.8.2009 (Annexure.A/9) that the written examination for the post of PGT Hindi would be held later, on 23.8.2009, at the Divisional Office. However, just two days before the written examination scheduled to be held on 23.8.2009, through the impugned Annexure.A/1 dated 21.8.2009, it was ordered that the applicant of this OA (along with applicant of the second OA No.186/2009), was ineligible for appearing at the written examination scheduled to be held two days later on 23.8.2009. In the case of the applicant of this OA, the ground mentioned for declaring him ineligible was that since he was posted as Head Master of Railway Primary School, Abu Road, but not posted as a Trained Graduate Teacher (TGT), he was ineligible for participating in the selection for the post of PGT in the pay band Rs. 9300-34800 plus grade pay of Rs.4800/-.



5. The applicant has impugned this order, stating that since he had been selected and promoted to the post of Head Master Hindi Medium, and was already substantively occupying the post equivalent to the post of Trained Graduate Teacher (TGT), he was fully eligible to be considered for appointment to the next higher post of Post Graduate Teacher (PGT). He has submitted that he was possessing all the requisite qualifications for the post of PGT, since he was selected and substantively appointed on promotion to the post of Head Master of Primary School, which is also one of the feeder posts for promotion to the posts of PGTs as per the channels of promotion (AVC) prescribed in this regard through Annexure A/10 dated 15.10.1996. He, therefore, prayed that the impugned letter dated 21.8.2009(AnnexureA/1)may be quashed and set aside, and the respondents may be directed to treat him as an eligible candidate for selection for promotion to the post of PGT, and may be further directed to call him for examination, and, if found fit, then he should be promoted to the post of PGT, with all consequential and monetary benefits.

6. The applicant had filed this OA on 28.8.2009, and had prayed for interim relief that the process of selection already undertaken by the respondents for the post of PGT Hindi may be stayed, and the respondents may be restrained from declaring the result of the examination which was held on 23.8.2009, or, in the alternative, the respondents may be directed to call him provisionally



for examination, and if found fit he may be promoted to the post of PGT.

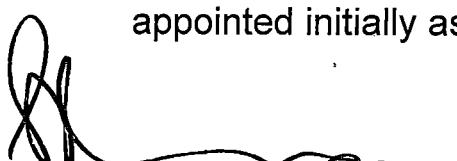
7. A prayer was made for early listing by the applicant himself being present on 31.8.2009 in person before the Deputy Registrar, and the case was listed the same day before the Bench. After considering the facts of the case, and in view of the averments made in the documents produced, the Bench directed that the result of examination held on 23.8.2009 will be subject to the result of this OA, and the respondents were further directed to inform all those who had taken part in the examination held on 23.8.2009 that the result of that examination will be subject to the result of this OA.

8. Since the respondents had filed similar reply written statements, their reply will be discussed in respect of the two cases together.

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9. The applicant of this OA has also challenged the same process of selection, and the same impugned order dated 21.8.2009 (Annexure.A/1) by which he also had been declared ineligible for appearing at the process of selection for the post of PGT (Hindi) to be held on 23.8.2009. The applicant of this OA passed his BA in the year 1991, B.Ed. in the year 1996, and then MA in Hindi in the year 2002.

10. The applicant of this OA had been selected and appointed initially as a Drawing Teacher in the pay scale of Rs. 1400-



2600/5500-9000, through order dated 30.4.1999, Annexure.A/6 of this OA, at the Railway Higher Secondary School, Abu Road. When the notification for the selection to be held for the post of PGT (Hindi), along with other posts of PGTs, was issued on 6.4.2009, he also had applied, and, in the initial list of candidates eligible for participating in the examination notified on 14.7.2009 through Annexure.A/8 of this OA, his name also appeared below the name of the applicant of the first OA. He has also produced the revised channel of promotion (AVC) of School Teachers issued by the respondent authorities on 15.10.1996 (Annexure.A/10f this OA) to claim his eligibility for appearing in the said examination.

11. It is seen that in his case, in the impugned order dated 21.8.2009 it was mentioned that since he was appointed on the post of Crafts Teacher in the Railway Senior Secondary School, Abu Road, he could not be considered TGT in substantive capacity. It was further mentioned that only after being selected as a TGT by a positive act of selection, he could have acquired eligibility to compete for the post of TGT. As a result he was declared ineligible for appearing at the selection examination for the post of PGT.

12. The applicant of this O.A has assailed this action of the respondents, stating that the respondents have wrongly mentioned that he was working as a Crafts Teacher, while he is working as a Drawing Teacher, and even his order of appointment issued on 30.4.1999 (Annexure.A/6) is clear in this respect. He has further



submitted that the respondent authorities have rejected his candidature without any just and sound reasons, whereas some weightage was required to be given to him for his experience, because initially itself he was appointed in the pay scale of a TGT, though as a Arts Teacher. He submitted that since he was working on a post equivalent to the post of TGT, therefore, he was fully eligible for being considered for promotion to the post of PGT, as per the channel of promotion (AVC) prescribed in this regard. He had therefore, prayed that the impugned letter Annexure.A/1 dated 21.8.2009, declaring him also ineligible for appearing the selection for promotion to the post of PGT, may be quashed and set aside, and the respondents my be directed to treat him as an eligible candidate, and to call him for examination, and if found fit, then he may be promoted to the post of PGT, with all consequential and monetary benefits.

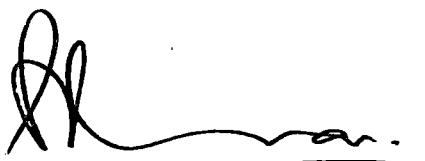
13. The applicant of this OA had also made a prayer for interim relief, similar to the one in the earlier OA, and had appeared in person on 31.8.2009, praying for immediate listing of the case, which was allowed by the Bench, and in his case also, after considering the documents and averments made therein, it was ordered that the result of the examination held on 23.8.2009 will be subject to the result of this OA, and the respondents were further directed to inform all those who had taken part in the examination on that date that the result of that examination will be subject to the result of this OA also.



14. The respondents have filed nearly identical reply statements in these two cases, and they can be discussed together. Because of similar names of the applicants, perhaps inadvertently, in the case of the reply filed in OA185/09 also, the respondents had at one place stated that the applicant was working as Crafts Teacher, which appointment cannot be termed as TGT, and, therefore, he was not eligible for promotion as PGT, and that his candidature was rightly rejected. It was submitted that his name had been included in the initial list of eligible candidates by a mistake, and the respondent authorities were within their rights to cancel his eligibility, which had been rightly so cancelled by rectifying the mistake. However in Para 11 & 12 of the reply statement it was mentioned that there is no rule or law which makes the Head Master of Primary School equivalent to that of TGT, and, therefore, the applicant is not TGT, and merely because he is Head Master of Primary School, his case cannot be considered for promotion to the post of PGT, as he is not a TGT in the appropriate subject. In Para 13 of the reply it was mentioned that the applicant, though he is Head Master of Primary School, but he was working only as a Crafts Teacher, and therefore, he cannot be considered as TGT, and cannot be considered for appointment as PGT. It was submitted that no rights of the applicant had been infringed and, therefore, the Tribunal may not like to interfere with the process of recruitment already undertaken by the respondent authorities, and that the OA was liable to be dismissed.

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15. Similar grounds were taken by the respondents in the reply written statement filed in OA 186/2009 also, and it was submitted that since, admittedly the applicant of this OA was working as a Crafts/Drawing Teacher, in view of the channel of promotion (AVC) enclosed by the applicant himself, and in view of the letter dated 01.12.1999 (Annexure.R/2), the applicant is eligible only for appointment to the post of TGT, and that too by selection, and thereafter, after entering in the TGT grade alone he will become eligible for selection to the post of PGT. It was further submitted that his name was also wrongly included initially in the list of eligible candidates by an administrative mistake, and that he cannot be allowed to take advantage of a mistake, and that the respondents were fully within their rights to rectify their mistake through the impugned letter dated 21.8.2009 (Anenxure.A/1), and OA is therefore liable to be rejected.

16. Heard the cases in detail, and the respondents relied upon a copy of Paragraph 178 of the Rules for the Recruitment of Railway Staff, as laid down in Chapter I of the Indian Railway Establishment Manual, Vol.I, 1989. It was submitted that from a perusal of this Para 178 (category XIV) Railway School Staff, on page36 of the IREM Vol.I 1989 edition, it was clear that Head Masters/Head Mistress of Primary Schools fell in a separate category (iv), while the Trained Graduate Teachers fell in a separate category (iii), and the Craft Teachers fell within the separate category (v), while the Post



Graduate Teachers fell in the category (i), and therefore, the Trained Graduate Teachers could not be equated to either the Head Masters /Head Mistress of Primary Schools, or Craft Teachers at all. It was further submitted that even the vacancy notification dated 6.4.2009 had clearly mentioned the eligibility criteria for the Post Graduate Teachers as follows:

“(i) Post Graduate Teacher

- “(i) IIInd Class Master’s Degree in relevant teaching subject.
- (ii) University Degree/Diploma in Education/Teaching or Integrated two years’ Post Graduate course of Regional Colleges of Education of N.C.E.R.T.
- (iii) Competence to teach through the medium/media, as required (Hindi & English).

Note: The condition of II and Class in Master's Degree can be relaxed for TGT candidates who have at least 5 years experience as TGTs."

17. It was submitted that both the applicants of these two OAs could not be treated as TGTs, and being eligible for participating in the selection for the post of PGTs, in spite of the fact that they held the Masters Degree in the relevant teaching subject, Hindi.

18. On the other hand, learned counsel for the applicant of OA 185/2009 stressed upon the point that the channel of promotion of School Teachers (AVC) notified on 15.10.1996 (Annexure A/10 of both the OAs) clearly showed that the Head Masters (Primary), Trained Graduate Teachers/Junior Teachers, and the PTI/.Drawing Teacher/Craft Teacher were all in the same pay scale of 1400-2600, and in a combined Seniority for promotion to the posts of either Head Masters of middle schools, or as Post Graduate Teachers. It was submitted that since the channel of promotion (AVC) clearly

prescribed a combined seniority for three categories, it could not be stated by the respondents that Head Masters (Primary) were not same or equivalent as TGTs, and, therefore, the applicant of OA No.185/2009, who was already holding the post of Head Master (Primary) in substantive capacity, through orders dated 22.5.2008 (Annexure.A/5) read with 21/7/2008 (Annexure A/6), the respondents could not deny him the eligibility to appear at the selection for the post of PGTs.

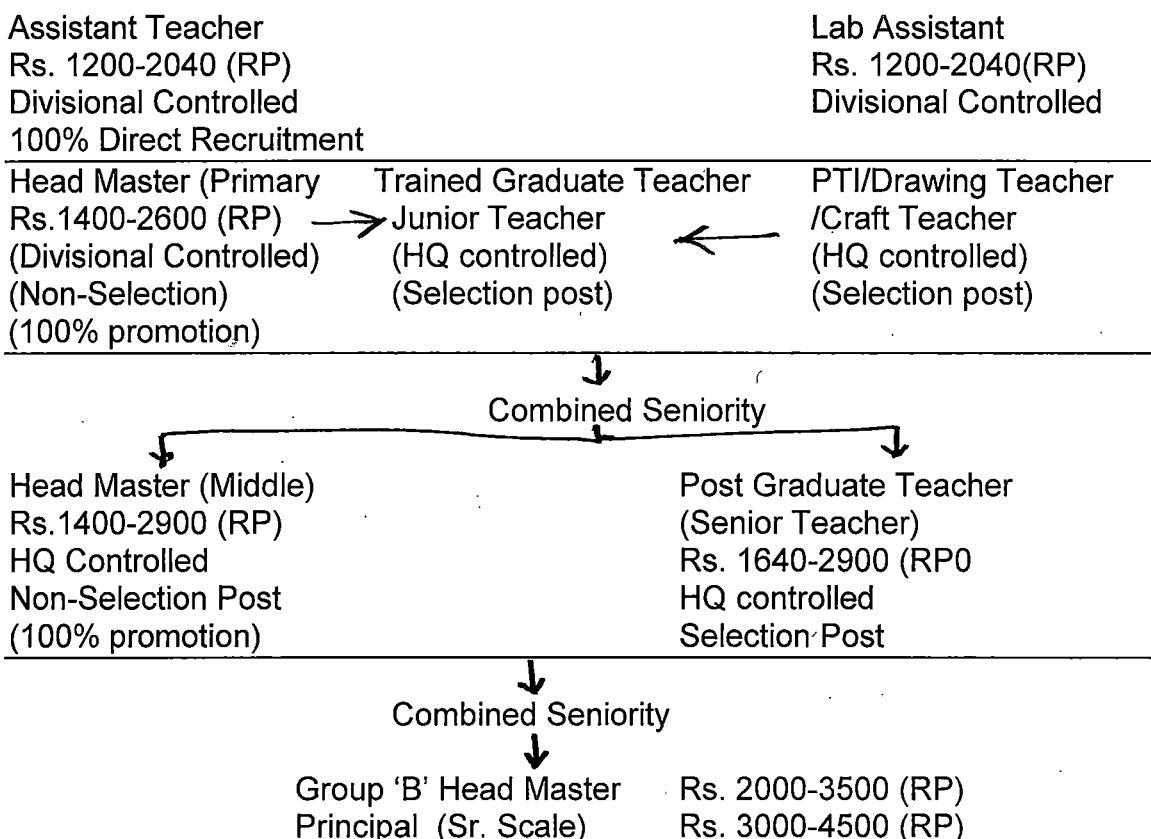
19. The learned counsel for the applicant of OA 186/2009 also adopted this argument, to state that when the AVC channel of promotion prescribed a combined seniority being maintained for the PTIs/Drawing Teachers/Craft Teachers along with the TGTs and Junior Teachers, and they enjoyed the same pay scale, the applicant therein could not have been denied eligibility to appear at the selection for the promotional post of PGT (Hindi).

20. It would be proper to note here that the respondent authorities did not challenge or deny the continued applicability of the revised channel of promotion of School Teachers (AVC) prescribed through the letter dated 15.10.1996, which is Annexure.A/10 in both the OAs, and the learned counsel for the respondents did not produce any modified channel of promotion (AVC) issued to modify Annexure.A/10 dated 15.10.1996 which is Annexure.A/10. It would be useful to reproduce here a part of the Channel of Promotion



(AVC) dated 15.10.1996 (Annexure A/10), and the explanatory notes indicated therein:-

“CHANNEL OF PROMOTION OF SCHOOL TEACHERS



- 1) not reproduced
- 2) not reproduced
- 3) not reproduced
- 4) The qualifications laid down for TGT and PGT are applicable to the posts of Head Masters of Primary School & Head Masters of Middle School respectively.
- 5) If serving Teachers with requisite qualifications are not available or if selections do not yield suitable candidates, for promotion to the post of PTI, Drawing Teacher, Craft Teacher, TGT or PGT; Direct Recruitment from Open Market in these categories will be resorted to through RRBs.
- 6) Those PTIs/Craft Teachers/Drawing Teachers who are holding necessary qualification will have AVC to the post of TGT scale Rs. 1400-2600 (RP) through selections." (emphasis supplied)

21. The explanation (6) of the AVC as reproduced above states that the PTIs/Craft Teachers/Drawing Teachers who are

[Signature]

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holding necessary qualification will have avenues of promotion (AVC) to the post of TGT scale Rs.1400-2600 (RP) through selections. Therefore, to this extent, the chart as reproduced above is not clearly applicable for a combined seniority list being made of the PTI/Drawing Teachers/Craft Teachers along with the Trained Graduate Teachers, which has been mentioned to be a selection post therein.

22. However, when we see explanation (4), as reproduced above, it clearly prescribes that the qualifications as laid down for the TGT and PGT are also applicable respectively to the posts of Head Masters of Primary Schools and Head Masters of Middle school respectively. There is no qualificatory explanation mentioned in the AVC dated 15.10.1996 (Annexure.A/10 of both OAs), which shows that, like the PTI/Craft Teachers/Drawing Teachers, even the Head Masters of the Primary Schools will also have a channel of promotion (AVC) to the post of TGT through a process of selection only. If the authorities had so intended, the explanations(4)& (6), as reproduced above, could have been so worded by them appropriately/differently.

23. Therefore, it is quite obvious from the documents and from the AVC dated 15.10.1996 prescribing channel of promotion of school teachers, that Head Masters(Primary) are in all ways and manners equivalent to Trained Graduate Teachers, as even the qualifications laid down for the two posts have been prescribed to be equal by Explanation No. (4) of the AVC. However, it is not so in the




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case of PTI/Drawing Teachers/Craft Teachers, who have to undergo a process of selection to attain the posts of TGT, if they are holding the necessary qualification.

24. In these two cases, the applicant of OA No. 185/09 Shri Din Dayal Bairwa, was kept in the select list, and substantively appointed thereafter, as Head Master (Primary School) on promotion, through Annexure.A/5 dated 22.5.2008, and Annexure.A/6 dated 21.7.2008 of his OA. He also possessed Second Class Masters Degree in the relevant subject i.e., Hindi, and, therefore, it is held that he could not have been differentiated from the three other TGTs of Hindi, whose names had been included at Serial Nos. 1 to 3 in the eligibility list notified on 14.7.2009 through Annexure.A/8 for the selection for the post of PGT Hindi.

25. However, since it is clear that the applicant of OA No.186/2009 has never undertaken/undergone the process of selection, and has not become TGT so far, through a positive act of selection, which had been prescribed through Explanation (6) of the AVC revised channel of promotion notified on 15.10.1996, he was not eligible for getting his name included in the list of eligible candidates notified on 14.7.2009 through Annexure.A/8.

26. Therefore, in the result OA No. 185/2009 succeeds, and it is ordered that the applicant of that OA, Shri Din Dayal Bairwa, Head Master of Railway Primary School, Abu Road, was, by virtue of his substantive appointment as a Head Master (Primary), which is



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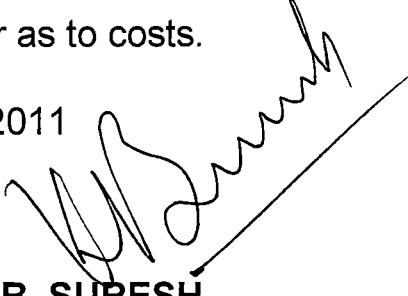
fully equivalent to TGT, eligible for appearing at the selection test for the post of PGT, since he had requisite qualification in the concerned teaching subject. Therefore, the respondents are directed to allow the applicant of this O.A, Shri Din Dayal Bairwa, to appear at the selection examination for the post of PGT Hindi, and, if he is selected, to appoint him to the said post. However, such selection and appointment would obviously be prospective in effect, and shall not have retrospective effect.

27. However, OA No. 186/2009 fails, inasmuch as the applicant of this OA had continued to be a Drawing Teacher, and had never attained the status of TGT through a positive act of selection, as prescribed through explanation(6) of AVC channel of promotion prescribed on 15.10.1996 through Annexure.A/10.

28. In the result OA No.185/2009 is allowed, and OA186/2009 is dismissed as not maintainable. However, in the facts and circumstances of the cases, there shall be no order as to costs.

Dated this the 3rd day of December, 2011


SUDHIR KUMAR
ADMINISTRATIVE MEMBER


DR. K.B. SURESH
JUDICIAL MEMBER