

7/2

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**O.A.No. 97/2012**

**Date of decision: 20.07.2012.**

**Reserved on: 18.7.2012**

**CORAM:**

**HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER**  
**HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER**

Dr. Mukesh Harsh S/o Radha Kishan Harsh,  
R/o Harsho Ka Chowk, Bikaner. ....Applicant

(By Advocate Mr. Rajeev Purohit)

Vs.

1. Kendriya Vidyalaya Sangathan,  
18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi through Commissioner.
2. Joint Commissioner, Kendriya Vidyalaya  
Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg,  
New Delhi.
3. Controller of Examinations, Central Board of  
Secondary Education, "Shiksha Kendra"  
2 Community Centre, Preet Vihar, Delhi. ...Respondents

(By Advocate Mr. P.S.Bhati)

**ORDER**

**Per: Dr. KBS Rajan, Judicial Member**

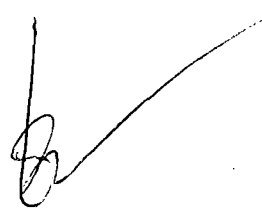
The respondent, Kendriya Vidyalaya, through Annexure A-1 notification, called for applications from eligible candidates for appointment for the post of Trained Graduate Teachers (TGT) and the said notification also contained the procedure for selection. Briefly, the procedure included a preliminary examination, which is the first filtration process followed by the main examination and thereafter

B

73

interview. The applicant was one of the aspirants to the said post. On his qualifying in the preliminary examination, the applicant was informed by Annexure A-3 communication that the candidate should also qualify in the Central Teacher Eligibility Test (CTET), which would be conducted by the appropriate government in accordance with the guidelines framed by the National Council for teacher (NCTE). In addition, the communication also stated that the applicant should submit a copy of his marks sheet of CTET along with his Roll No. allotted to him for appearing in the preliminary examination within 15 days of the declaration of CTET results so that **he might be considered for Main Examination.** The aforesaid condition of qualifying in the CTET examination was not one of the conditions notified in the advertisement. Nevertheless, the applicant did participate in the CTET examination and also qualified in the same. Annexure A4 and A-5 marks sheet/certificate refer. While the applicant was awaiting communication relating to the main examination, he learnt that the respondent Kendriya Vidyalaya had started calling certain candidates for interview without holding the main examination, but on the basis of the merit in the qualifying CTET examination. The procedure adopted by the respondent Kendriya Vidyalaya being not in conformity with the notification issued, the applicant has moved this OA, seeking the following reliefs:-

- (i) That by an appropriate order or direction in the appropriate nature, the notice dated 28.2.2012 (as uploaded in the website), for the conduct of the interview on the post of the TGT may kindly be quashed and set aside.
- (ii) That further by order or direction in the appropriate nature, the respondent No.1 may be directed to initiate the proper selection procedure by conducting the main



- examination and thereafter, the interviews as per the advertisement.
- (iii) That any other order or direction, with this Hon'ble Tribunal, deems fit and proper, in the facts and circumstances of the case may kindly be passed in favour of the applicant.
  - (iv) That cost of the application may be awarded in favour of the applicant.

2. Respondents have contested the OA. It is, however, admitted by them that as per the advertisement, candidates applying for the posts are to appear at the preliminary examination and based on their performance in the said examination the shortlisted candidates were required to appear at the main examination. The final merit list is prepared on the basis of the marks obtained in the main examination and the interview in the ratio of 80:20. The respondents have further stated that in the meantime, by notification dated 23<sup>rd</sup> of August 2010, the Government of India, in compliance of Section 23 of Right to Education Act, laid down the minimum qualification for a person to become eligible for appointment as a Teacher for classes I to VII. which included qualifying in the Central Teacher Eligibility Test (CTET). The respondents, therefore, decided that the candidates shortlisted in the preliminary examination would appear at the aforesaid CTET and accordingly issued a communication to all those who qualified in the preliminary examination to appear in the aforesaid CTET. The candidates were also advised to submit the mark sheets of the said CTET examination. Respondents had then decided that based on the merit of CTET, the candidates in the ratio of 1:3 may be called for interview, treating the very CTET examination as the main examination. Thus, the weightage of 80 marks which were originally

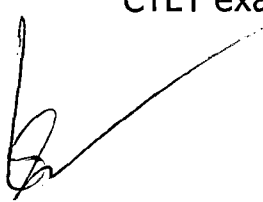
7/5

meant for the main examination was to be given to the CTET examination. Duly providing necessary percentage of reservation for the reserved candidates etc., the selection was being held. Thus according to the respondents uniformity has been maintained in respect of all the candidates.

3. By way of an interim order, passed on 26<sup>th</sup> of March 2012, the respondents are directed not to finalize and declare the results of the selection without the leave of the Tribunal. The said interim order still continues.

4. Counsel for the applicant submitted that when the advertisement indicated the procedure for conducting the selection, without conducting the main examination which would be of the character of a competitive examination, treating the qualifying CTET examination as the main examination without any intimation to the candidates, amounts to change of the game plan in the midstream. The same is impermissible.

5. Counsel for the respondents conceded to the fact that the procedure followed is not the same as the one reflected in the notification. He has also admitted that the CTET examination conducted by the appropriate government is only a qualifying examination. No candidate was informed that the selection of candidates would be based on the merit in the aforesaid qualifying CTET examination.



6. Arguments were heard and documents perused. Facts being admitted, the same obviate debate. The only legal issue to be considered is as to whether the procedure adopted by the respondents in the matter of selection for the post of TGT is legally valid. Answer to the same lies in the decision of the Apex Court in the cases referred to in the succeeding paragraphs.

7. In **Hemani Malhotra v. High Court of Delhi, (2008) 7 SCC**

**11**, the Apex Court has held as under:-

**14.** It is an admitted position that at the beginning of the selection process, no minimum cut-off marks for viva voce were prescribed for Delhi Higher Judicial Service Examination, 2006. The question, therefore, which arises for consideration of the Court is whether introduction of the requirement of minimum marks for interview, after the entire selection process was completed would amount to hanging the rules of the game after the game was played. This Court notices that in **K. Manjusree v. State of A.P. (2008) 3 SCC 512** the question posed for consideration of this Court in the instant petitions was considered and answered in the following terms:

*"33. The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either*

X

*during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview." (Emphasis supplied)*

From the proposition of law laid down by this Court in the abovementioned case it is evident that previous procedure was not to have any minimum marks for viva voce. Therefore, prescribing minimum marks for viva voce was not permissible at all after the written test was conducted.

**15.** There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal. (emphasis supplied)

8. The above law has been reiterated in the case of **T.N. Computer SC BEd. Govt. Welfare Society (1) v. Higher Secondary School Computer Teachers Assn., (2009) 14 SCC 517,**

*This Court in **Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11** has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible. (Emphasis supplied)*

9. In view of the above, the procedure adopted by the respondents cannot be held to be valid in the eyes of law. The entire selection procedure from the stage of qualifying in the preliminary examination has, necessarily to be held illegal and hence, invalid. Since qualifying in the CTET is one of the essential requirements under the Right to Education Act for appointment as Teacher, notwithstanding the fact that the same has not been reflected in the

advertisement, respondents' action in requiring the candidates to qualify in the preliminary examination also to qualify in the said CTET examination cannot be faulted with. However the main examination is required to be conducted in accordance with the advertisement published and thereafter interviews may be held for making the ultimate selection.

10. Respondents are, therefore, directed to proceed further with holding of the main examination as notified in the advertisement and in so far as the interview conducted on the basis of the merit position in the CTET examination, they shall inform those who have been called for interview that the said interview is treated as null and void as the same was not conducted in accordance with the notified procedure. To the above extent, the OA is allowed.

11. Under the circumstances, there shall be no orders as to costs.

  
(B K SINHA)  
ADMINISTRATIVE MEMBER

  
(Dr. K B S RAJAN)  
JUDICIAL MEMBER

pps

Copy Recd  
26/07/12

Copy Recd  
26/07/12