

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 994/1997

THIS, THE 5 TH DAY OF DECEMBER, 2002

CORAM:

HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE CHAIRMAN (J)
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

R.M. Dhodia, working as
Asst. High School Teacher
at Naroli, via Bhila
Union Territory of
Dadra & Nagar Haveli,
Silvassa. ... Applicant

By Advocate Shri G.S. Walia.

Versus

1. Administrator,
Union Territory of
Dadra & Nagar Haaveli,
silvassa.
2. Asst. Director of Education,
Education Department
Union Territory of
Dadra & Nagar Haveli,
Silvassa. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant is aggrieved that he has not been promoted as Post Graduate Teacher (PGT). He has impugned the order dated 01.8.1997 by which 36 Assistant Teachers were promoted as PGT in various subjects and the adhoc promotion granted to the applicant and few others has been withdrawn.

2. At the relevant time of issue of promotion order, the applicant was working as Assistant Graduate Teacher at Naroli in Science wing in Gujarati medium

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teaching Biology and Chemistry in High School. The applicant belongs to ST. He possess the qualification of B.Sc., B.Ed. with seven years experience as Assistant Teacher. He was granted adhoc promotion with effect from 30.3.1994 as PGT.

3. On 28.12.1995 the respondents issued a Notification for recruitment and filling up of 36 posts of PGT and by letter dated 01.8.1997 36 teachers were promoted and the name of the applicant is not included in the list of promotees. The adhoc promotion granted to him was withdrawn by the same letter. The applicant has now prayed for granting him promotion as PGT.

4. The contention of the applicant is that he belongs to ST, and a post should have been reserved for the ST. He is the only senior most ST teacher in the Science wing both in English and Gujarati medium. Therefore, he ought to have been considered for promotion as PGT either in Biology or Chemistry in Gujarati medium. According to the applicant he fulfills the requisite qualification prescribed for the post of PGT. The respondents have not maintained subject wise medium wise rosters, they have clubbed all the posts irrespective of whether it is Arts, Science or Commerce wing and also irrespective of in what subjects the teachers were qualified. Only a teacher of the subject speciality, has to be posted to teach that subject.

5. The applicant has also objected the promotion of his junior Shri B.B. Rathod and Smt. H.B. Takore who were promoted.

6. The applicant has also filed MP bringing out a subsequent development whereby the respondents have issued a fresh Notification on 08.6.1998 for filling up of posts of PGT and calling for bio-data of teachers who are having the required Postgraduate degree qualification and who fulfil other criteria laid down in the recruitment rules. The vacancies notified included one post each of PGT for Biology and Chemistry in Gujarati medium. According to the applicant these posts should not have been notified for being filled through direct recruitment as they belong to the initial constitution of the cadre and therefore according to the recruitment rules they need to be filled by promotion. He has therefore, prayed to restrain the respondents from filling up of the post through direct recruitment and to consider the applicant for promotion in accordance with the Notification issued on 28.12.1995.

7. The applicant further submits that in the initial constitution of the cadre, out of 12 posts reserved for Science faculty, 9 were filled up including one by Shri B.B. Rathod at S1. No.4, but Shri Rathod had been on deputation for last three years much before the order of 01.8.1997 and therefore, the vacancy is to be treated as an initial vacancy and the applicant should

have been considered against the said vacancy when the order of 01.8.1997 was passed.

8. The respondents submit that according to the recruitment rules, for the post of PGT a Postgraduate Degree in the subject concerned is essential. While not denying that the applicant possesses B.Sc., B.Ed. with seven years service as Assistant Teacher which is the qualification prescribed under column 12 of the recruitment rules, the respondents point out that the note below column 12 clearly states that "in case of promotion, separate list of teachers, subject wise medium wise will be maintained by the Education Department showing the qualification of the teacher and the subject he is teaching. However, educational qualification will be given over-riding priority to facilitate promotion as per requirement of the Department and seniority of teachers "and therefore since the requirement for the post of PGT is a Postgraduate Degree in the concerned subject and since the applicant does not possess the Postgraduate qualification the applicant could not be considered for promotion to the post of PGT.

9. Coming to the subsequent Notification of 08.6.1998 the respondents submit that the vacancy in the subject of Chemistry has arisen on account of the deputation of Shri B.B. Rathod. The respondents denied

that the vacancies notified in 1998 belongs to the initial constitution of cadre. The respondents submit that the DPC had recommended 36 Assistant Teachers for promotion to the post of PGT. Accordingly promotion orders of 36 teachers were issued. Therefore fresh vacancies which have arisen subsequently cannot be termed to be belonging to the initial constitution of the cadre. Further, it is mentioned in the last para of the proceedings to the DPC that there are no teachers in the feeder cadre with required qualification in the subject in which the vacancy exists. The DPC therefore recommended that the posts where teachers with requisite qualification were not available, they be filled up as per the 'failing which' clause i.e. by direct recruitment. Accordingly, the respondents had notified the vacancies to be filled through direct recruitment vide Notification dated 08.6.1998. The respondents therefore, have justified their action in not considering the applicant for promotion for PGT in the circumstances mentioned above.

10. We have heard the learned counsel for the applicant as well as the respondents and have given our careful consideration to the pleadings. We have also perused the relevant recruitment rules for the post of PGT. Column No.11 of the recruitment rules provides for the post to be filled by promotion to the extent of 50% failing which by direct recruitment and 50% by direct recruitment. The note below that provides that for formation of initial cadre of 36 PGT recruitment will be made 100% by promotion failing which by direct

recruitment. The respondents, therefore filled up the 36 posts of PGT by promotion vide order dated 01.8.1997, the same is in order. Column 8 of the recruitment rules relating to educational and other qualification required for direct recruitment reads as follows:-

1. First Class M.A./ M.Sc/M.Com or equivalent Post Graduate Degree from recognised University and Degree in Teaching Education OR
2. Second Class M.A/M.Sc/M.Com or equivalent post graduate Degree with M.Ed Degree with 3 years teaching experience in HSS or B.Ed. Degree with 5 years teaching experience in High School.

Column 12 provides for qualification for promotion, it reads as follows:-

Trained Graduate Teachers in the pay scale of Rs.1400-2600 possessing qualification and experience for direct recruit failing which Trained Graduate Teachers in the pay scale of Rs:1400-2600 with 7 years regular service in the grade. This condition is applicable for initial constitution of other cadre only.

(a) In case of promotion separate list of teachers subjectwise, mediumwise will be maintained by the Education Department showing the qualification of the teacher and the subjects he is teaching. However educational qualification will be given overriding priority to facilitate promotion as per requirement of the Department and seniority of teachers.

According to the qualification prescribed for promotion the trained graduate teachers possessing qualification and experience prescribed for direct recruits are eligible for promotion, failing which the trained graduate teachers must have seven years regular service in the grade and this condition is applicable for initial constitution of the cadre only. It is provided therein that education qualification will be given overriding priority to facilitate promotion as per

requirement of the department and seniority of teachers. Further, while filling up of the posts it had been notified that the candidates must possess Postgraduate Degree in the subject concerned. It is therefore clear that the applicant does not possess the requisite Postgraduate Degree either in the subject of Biology or in Chemistry which he is teaching. The respondents therefore rightly did not consider him for promotion as PGT. Therefore, the other contention of the applicant regarding his being senior most ST and the respondents not providing for proper reservation and the respondents' action of promoting his juniors do not survive. In regard to his juniors also the respondents have clarified that both Shri B.B. Rathod and Smt. Takore possess Postgraduate qualification as prescribed. Therefore, the applicant cannot compare himself with his juniors, the applicant also not made them parties to the OA. Therefore, no relief can be granted against the juniors mentioned by the applicant.

10. Coming to the Notification of 08.6.1998 we are satisfied that the respondents have acted according to the recruitment rules. The DPC was held for all the 36 PGT which formed the initial constitution of the cadre and only after the promotion method failed that the DPC

recommended direct recruitment for filling up of posts when candidates fulfilling the requirements as per ~~the~~ ^{(2) in view of the} recruitment rules were not available.

11. In the facts and circumstances of the case, in our considered view, the OA is devoid of merit and does not call for any interference with the impugned order dated 01.8.1997 or the Notification dated 08.6.1998. Accordingly, the OA fails and is dismissed without any order as to costs.

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(SMT. SHANTA SHAstry)
MEMBER (A)

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(SMT. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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