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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

(1) CP 01/05 under Page 1 INDEX
CP Landowner 3/1/2008 O.A/T.A No. 2008/2006 1/05
(2) MP 108/2007 under Page 1 Dismissed R.A/C.P No.
21.9.2007 E.P/M.A No.

1. Orders Sheet..... O.A..... Pg. 1..... to 7.....
IN P12 8/2005 order Pg. 1..... Pg. 1..... to 10 27.7.05
2. Judgment/Order dtd. 03.04.2007..... Pg. 1..... to 11. 8/0.....
3. Judgment & Order dtd..... Received from H.C/Supreme Court
1/2005
4. O.A..... Pg. 1..... to 2. 8.....
5. E.P/M.P. 12.9/05..... Pg. 1..... to 4.....
MP 108/2007 Pg. 1..... to 47
6. R.A/C.P. 1/05..... Pg. 1..... to 21.....
7. W.S..... Pg. 1..... to 2. 4.....
8. Rejoinder..... Pg. 1..... to
9. Reply..... Pg. 1..... to
10. Any other Papers..... Pg. 1..... to
11. Memo of Appearance.....
12. Additional Affidavit in opposition R.NO. 4. Pg. 2 - 1 to 7.....
Affidavit in opposition R.NO. 2 page 1 to 7 R.NO. Pg. 1 to 7 2008/2007 1/03
13. Written Arguments..... from C.P. 1/2005.....
14. Amendement Reply by Respondents.....
15. Amendement Reply filed by the Applicant.....
16. Counter Reply.....
not available in MP 108/2007
Some Letters page 1 in MP 108/2007

SECTION OFFICER (Judl.)

Kohli
21.10.07

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

APPLICATION NO.

01/05 OF 199

Applicant(s) *Madhu Biswas*Respondent(s) *U.C. S. Das*Advocate for Applicant(s) *MR P.K. Tiwari*
*MR J. Pukkayastha*Advocate for Respondent(s) *Adv. Counsel, S. Sen Gupta*

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C. P. of P.K. 101 deposited vide L.P. B.D No. 20G 117250 Dated 03/01/2005</p> <p>1/c Dy. Registrar 4/1/05</p> <p>steps taken.</p> <p>Notice & orders sent to D/Section for issuing to resp. Nos. 1 to 9 by regd. A/D post.</p> <p>2/2/05.</p>	5.1.2005	<p>Heard Mr. P.K. Tiwari, learned counsel for the applicant and also Ms. U. Das, learned counsel for the Railway.</p> <p>Issue notice to the respondents to show cause as to why application shall not be admitted.</p> <p>List on 07.02.2005 for admission.</p> <p>I.C. Bhattacharya Member (A)</p>

Notes of the Registry	Date	Order of the Tribunal
4-2-05 S/R (awarded) b/w Pl. Comply and date 7-2-05	7.2.2005	<p>present: The Hon'ble Mr. M.K.Gupta, Judicial Member.</p> <p>Ms.U.Das, learned counsel appearing on behalf of the Respondents, states that she has no instruction from Respondent Nos.1-4 who are official Respondents in the present case. Mr.P.K.Tiwari, learned counsel for the applicant states that no reasons are xx coming forth as to why notices were issued only on 2.2.2005 though the notices were ordered to be issued on 5.1.2005.</p> <p>Adjourned to 11.2.2005 enabling the Respondent Nos.1-4's counsel to seek instruction on the subject.</p>
Reb=Order dt-7/2/05. Due to non receipt of clear/ correct address of resp. No-4, correspondances were made with advocates, so notices could not be issued in time. only on 2-2-05 the advocate verbally informed that notice to R-4 may be sent to the address of R-3. Accordingly notice was issued to R-4. 10/2/05. <i>Normal 10.2.05</i> S.C.O.G. (Signature) Plaas County for P.U. Tiwari dated 11.2.05.	11.2.05 bb	<p>present: The Hon'ble Mr.M.K.Gupta, Member (A).</p> <p>The Hon'ble Mr.K.V.Prahladan, Member, (A).</p> <p>Ms.U.Das, learned counsel appearing for the respondents seeks further time on the ground that she has not received any instruction from the Railways. Mr.P.K. Tiwari, learned counsel for the applicant strongly opposed further adjournment on the ground that no reply has been filed and the respondents may rush to promote certain officials. It is contended that appointment made to the post of P.G.T. (English) should be made subject to the outcome of the present O.A. We order accordingly.</p> <p>Adjourned for filing reply as prayed for on 29.3.2005.</p>
	bb	<p><i>K.V.Prahladan</i> Member (A)</p> <p><i>J.</i> Member (J)</p>

Notice duly served N.S
on resp.(4,5,6,7) (g) 16-2-05 Received
by Usha Das
S.C.C. Comma

- 3 - OA 1/05

Notes of the Registry	Date	Order of the Tribunal
<u>28-3-05</u> No reply. Case served. R-A.O. 456-58. No reply has been. Filed. <i>AS</i>	<u>29-3-05</u>	<p>Present: Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.</p> <p>Heard learned counsel for the parties. Application is admitted. Mr. S. Sengupta learned Railway counsel seeks time for filing reply.</p> <p>Post the matter on 27-4-05. <i>AS</i></p>
<u>26-4-05</u> No reply. Case served. Filed. <i>AS</i>	<u>27.4.2005</u>	<p>Mr. J. Purkayastha, learned counsel for the applicant is present. Mr. S. Sen- gupta, learned counsel for the respondents submits that some more time is required for filing written statement. Post on 9.5.2005. <i>AS</i></p>
<u>5-5-05</u> No W.S. filed. 1m	<u>9.5.05</u>	<p>Ms. B. Devi learned counsel on behalf of Mr. P. K. Tiwari, learned counsel for the applicant submits that the written statement has been filed only to-day and that the Respondents wants to file rejoinder. Heard Mr. S. Sengupta, learned counsel for the Respondents. Post the matter on 10.6.05 for hearing. If any rejoinder, will be filed in the meantime. <i>AS</i></p>
<u>9.5.05</u> W.S. filed by the Respondents. <i>AS</i>		<p><i>AS</i> Member</p>
<u>9-6-05</u> No rejoinder has been. Filed. <i>AS</i>	<u>10.6.2005</u>	<p>Counsel for the applicant seeks further time for filing rejoinder. Post on 27.6.2005. No further adjournment shall be granted for that purpose. <i>AS</i></p>
<p>① W.S. has been filed. ② No rejoinder has been filed.</p> <p><i>AS</i></p>	<u>7-7-05</u>	<p>Now the matter is adjourned to tomorrow i.e. 8-7-05. <i>AS</i></p>

8.7.2005

Mr P.K. Tiwari, learned counsel for the applicant is absent with notice. Mr S. Sengupta, learned Railway Counsel is absent. Post on 12.7.05.

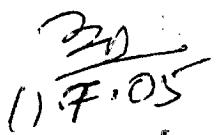

Member


Vice-Chairman

(1) W/S have been filed.

(2) No. responder has been filed.

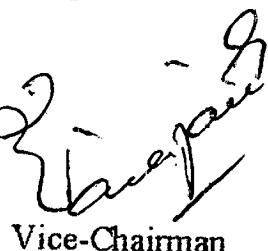
nkm


By
11/7/05

12.07.2005

Mr. P.K. Tiwari, learned counsel for the applicant has given a letter of absence. Mr. S. Sengupta, learned counsel for the respondents is present. Post on 18.7.2005

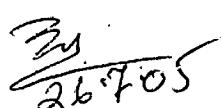

Member


Vice-Chairman

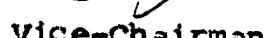
18.7.2005

Mr. P.K. Tiwari, learned counsel for the applicant and Mr. S. Sengupta, learned counsel for the respondents were present.

Heard in part. Counsel for the applicant Mr. P.K. Tiwari, has made his submission. Since it is seen that the acknowledgement card in respect of the private respondent Nos. 7 and 9 has not been received, counsel for the applicant has to take further steps. Post on 21.7.2005 for further hearing.


By
26/7/05


Member


Vice-Chairman

mb

21.7.2005

At the request of Mr. P.K. Tiwari, learned counsel for the applicant the case is adjourned to 27.7.2005.


Member


Vice-Chairman

Notes of the Registry | Date | Orders of the Tribunal

27.7.2005

The matter relates to appointment to the post of Post Graduate Teachers notified as per communication No.E/252/242(W)Pt.IV dated 6.10.2004 issued by the General Manager (P), Maligaon, Guwahati. The applicant's case is that though she is a Trained Graduate Teacher in English, she was ignored in the selection to the post of Post Graduate Teacher (English) and persons who were Trained Graduate Teachers in other subjects were selected for the post of Post Graduate Teacher (English). According to the applicant this is contrary to all the norms and against the interest of the students itself. Though the Railways have filed their written statement wherein at para 14 there are references to certain eligible persons and the number of persons to be called for interview, no supporting rules or regulations have been brought to our notice nor placed before us. We are of the view that since the matter relates to selection to the post of Post Graduate Teacher (English) the procedure (method of appointment) prescribed by the rules have to be verified for a satisfactory adjudication of this matter.

In the circumstances, we direct the General Manager (P), Maligaon, Guwahati to place before us through the learned Railway Counsel, Mr S. Sengupta, the relevant recruitment rules for the post of teachers including that of Post Graduate Teacher (English).

27.7.2005

Please comply
order dated 27.7.05

NS
28/7/05

Post the matter on 9.8.05.

Issue copy of this order to Mr S. Sengupta, learned Railway Counsel.

K. D. Mukherjee
Member

2] *[Signature]*
Vice-Chairman

nkm

9.8.2005 Inspite of the specific direction

issued to the General Manager (P), N.F. Railway, Maligaon, Guwahati to place before this Tribunal through learned counsel ~~xxx~~ the relevant Recruitment Rules for the post of teachers including that ~~xxx~~ of post graduate teachers (English), Mr. S. Sengupta learned Railway counsel is not able to place before us the said rules as on today. He seeks two weeks more time to produce the rules/regularisation/executive orders in the matter. Mr. P.K. Tiwari, learned counsel for the applicant is also present. Post on 02.09.2005.

No. Regd. under his
been filed.

3/1
8.8.05

K. D. Mukherjee
Member

2] *[Signature]*
Vice-Chairman

mb

2.9.05 Post the matter before the next
available Division Bench.

① W.L.O has been filed.

② No Regd. under his
been filed.

2/1

2] *[Signature]*
Vice-Chairman

7.10.2005

Heard Mr. J. Purkayastha, learned counsel for the applicant and Mr. S. Sengupta learned Railway counsel. The Railway counsel submits that the Rules are available and copies of certain documents have been supplied to the counsel for the applicant. Counsel for the applicant submits that same has to be verified. Post on 23.11.

D. D. Datta
Member

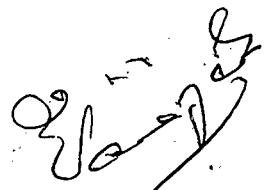
2] *[Signature]*
Vice-Chairman

bb

23.11.2005 This case, O.A.49/2005 and O.A. 61/2005 are connected matters. Mr.J. Purkayastha, learned counsel for the applicant and Mr.S.Sengupta, learned Railway counsel ~~are~~ are present. Post on 10.1.2006.

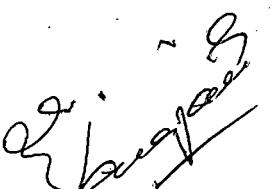
9-1-06

⑤ W.Ls has been filed.


Vice-Chairman

bb

10.01.2006 Post before the next Division Bench.


Vice-Chairman

mb

07.08.2006 Post ~~on~~ before the next Division Bench.

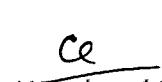

Member


Vice-Chairman

mb

28.02.2007 Heard Mr. P. K. Tiwari, learned counsel for the Applicant and Mr. S. Sengupta, learned Railway counsel.

Hearing concluded. Order is reserved.


Member(A)


Vice-Chairman

/bb/

3.4.07

Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No order as to costs.


Vice-Chairman

lm

*Received copy
Judgment on the above
3/4/07*

*23.4.07
copy of the copy
has been sent to
the office for filing
the same to the Regd Mr.*

Memo No. 5, 403 /WP(C) dated 20.9.07 received
from The Ass't. Registrar (I & E) Gauhati
High Court, Gauhati.

The order dated 12.09.2007 passed in
WP(C) No. 4756/07 at P.U.C. may kindly be
seen.

The Union of India on its behalf has filed the
WP(C) No. 4756 of 2007 before the Hon'ble
Gauhati High Court against the Indent/Order
dated 3.6.07 passed in OA No. 1 of
2005 and which was disposed of with a
direction to the respondents to re-consider
the matter afresh by the Selection Committee.
The Hon'ble Gauhati High Court has
pleased to admit the above mentioned WP(C)
with a direction to "status quo obtaining
as on to-day shall be maintained until
further orders."

Submitted for favor of kind perusal.

15/9/07
28/9/07

So (S).

As stated in the above note now the file
is submitted for kind perusal & orders please.

on leave
REGISTRAR

Received
28/9/07

SHONIBALE / VICE CHAIRMAN

28/9/07

Hon'ble Member (A) may like to see if

your thanks!

28.9.07

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 1 of 2005

DATE OF DECISION : 03.04.2007

Smt Mahua Biswas

..... Applicant/s

Shri P.K. Tiwari

..... Advocate for the
Applicant/s.

- Versus -

U.O.I & Others

..... Respondent/s

Mr. S. Sengupta, Railway Counsel.

..... Advocate for the
Respondents

CORAM

HON'BLE MR K.V. SACHIDANANDAN, VICE-CHAIRMAN

HON'BLE MRS CHITRA CHOPRA, ADMINISTRATIVE MEMBER

1. Whether reporters of local newspapers may be allowed to see the Judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether to be forwarded for including in the Digest Being complied at Jodhpur Bench & Other Benches ? Yes/No
4. Whether their Lordships wish to see the fair copy of the Judgment ? Yes/No

Vice-Chairman/Admin. Member

10

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 1 of 2005

Date of Order: This the 3rd day of ^{April} March 2007.

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN

THE HON'BLE MRS CHITRA CHOPRA, ADMINISTRATIVE MEMBER

Mahua Biswas, wife of Dilip Sarma,
Alipurduar Court District,
Jalpaiguri, West Bengal.

...Applicant

By Advocate Shri P.K.Tiwari,

-Versus-

1. Union of India, through the
Secretary, Ministry of Railways,
Govt. of India, New Delhi.

2. The General Manager,
N.F. Railway,
Maligaon, Guwahati-11.

3. General Manager,(Personnel)
N.F.Railway, Maligaon,
Guwahati-11.

4. The Selection Committee for making
selection to the post of Post Graduate
Teacher(English)held on 1.11.04/2.11.04
In Railway Higher Secondary Schools, N.F.Railway,
Represented by its Chairman.

5. Sudipta Das, Trained Graduate Teacher,
Lumding Railway Higher Secondary School,
Lumding, Assam.

6. Bharat Karjee, Physical Training Instructor,
Railway Higher Secondary School,
Alipurduar Junction, West Bengal.

7. Krishna Dutta, TGT
Bani Mandir Railway Higher Secondary School,
Siliguri, West Bengal.

8. Apurnamay Ghosh, TGT
Railway Higher Secondary School,
Alipurduar Junction, West Bengal.

9. Subhomay Sen, TGT
 Railway Higher Secondary School,
 Alipurduar Junction, West Bengal. Respondents

By Railway Counsel Sri S. Sengupta.

ORDER

CHITRA CHOPRA, MEMBER(A)

The present application is directed against the Memorandum dated 8.11.04 issued by the Respondents publishing select list of the candidates for the vacancies for the post of Graduate Teacher (PGT) English. The subject matter of this O.A involves legality of this O.M dated 8.11.04 by which the respondents No.5 to 9 were empanelled on their selection for the post of PGT English. Applicant's case is that except one all other private respondents are ineligible for such selection as they do not have the requisite qualification, while the applicant, despite being eligible for selection as PGT English, was not empanelled in the impugned select list dated 8.11.04.

2. The facts as set out in the O.A is as under :

The applicant is presently serving as Trained Graduate Teacher (TGT Basic Grade) at Railway Higher Secondary School, Alipurduar Junction, West Bengal. She is Post Graduate in English with qualification B.A. (Major in English). She joined as Primary Teacher on 6.1.2000 and become TGT on 13.1.02.

3. In the Railway Schools there are three different cadres namely, Primary School Teacher, Trained Graduate Teacher and

cl

Post Graduate Teacher. The cadres of teachers with various grades are shown below :

<u>Primary School Teacher</u>	<u>Pre-revised Scale</u>	<u>Revised Scale</u>
(i) Basic Grade	1200-2040	4500-7000
(ii) Senior Grade	1400-2600	5500-8000
(iii) Selection/ Non-functional Grade	1640-2900	5500-9000
<u>Trained Graduate Teacher</u>	<u>Pre-revised Scale</u>	<u>Revised Scale</u>
(i) Basic Grade	1400-2600	5500-9000
(ii) Senior Grade	1640-3500	6500-12000
(iii) Selection/ Non-functional Grade	2000-3500	7500-9000
<u>Post Graduate Teacher</u>	<u>Pre-revised Scale</u>	<u>Revised Scale</u>
(i) Basic Grade	1640-2900	6500-10500
(ii) Senior Grade	2000-3500	7500-12000
(iii) Selection/ Non-functional Grade	2200-4000	8000-13500

3. The extant provisions dealing with the recruitment of PGT do not specifically provide for promotion of TGT to the post of PGT but the manner in which the qualification of PGT are provided, it is obvious that the TGT having qualifications of teaching in the concerned subject with requisite academic qualification of the concerned subject are eligible for the post of PGT.

4. The Office of General Manager, Personnel, N.F.Railway, Maligaon, Guwahati issued circular No.E/252/242(W) Pt.IV dated 6.10.04 for selection to the post of PGT, Assamese, English and Bengali. In the present application the grievance of the applicant is only for the post of PGT English. In terms of the aforesaid circular selection for filling up of five unreserved vacancies of PGT English was to be held and names of 10 candidates as eligible candidates

were provided amongst these candidates. The names of the private respondents (5 to 9) were also included. It has been contended by the applicant that only respondent No.9 was eligible as respondent No.5 was working as TGT Arts, respondent No.6 was a Physical Training Instructor, respondent No.7 was a graduate in Bio-Science and respondent No.8 was a Bachelor of Fishery Science, whereas the qualification required was in the post graduate degree in English

5. Selection to the post of PGT English was held on 1.11.04. Candidates No.1 to 9 remained absent and remaining 8 candidates including applicant and private respondents participated in the selection. However, in the select list the names of the private respondents No.5 to 9 appeared to the exclusion of the name of the applicant.

6. Being aggrieved by the selection which was issued vide memo dated 8.11.04 she submitted a representation dated 15.10.04 to the Chief Personnel Officer, N.F.Railway, Maligaon, Guwahati. However, she received no response.

7. Her main grievance is that the impugned selection for the private respondents for the post of PGT English is incurably vitiated and there are serious irregularities in the preparation of panel as with the exception of one, all the other private respondents do not have the requisite qualification for appointment as PGT English. It has also been submitted in para 4.15 of the O.A that the circular of the Railways dated 6.10.04 had earlier came under challenge in O.A.1014/2004 before the Calcutta Bench of

the Tribunal. The O.A was filed by one Sambhu Chakraborty who has been working as TGT in Railway Higher Secondary School, Siliguri. His grievance, inter alia, was that though he has the requisite qualification for the post of PGT English but he was not invited for the selection/interview. Thus the methodology adopted by the respondents in making selection to the post of PGT English generated discontentment and anguish amongst the section of the eligible candidates. Further the circular dated 6.10.04 while publishing the list of eligible candidates used the expression "for promotion of PGT English" thus giving an impression that the selection in question was in fact for promotion to the post of PGT English. In the above background the following relief has been sought :

- i) Quash and set aside the list of eligible candidates for promotion of PGT English as contained in circular letter dated 6.10.04;
- ii) Quash and set aside the panel for PGT English as contained in the memorandum dated 8.11.04;
- iii) Quash and set aside the selection/appointment of the Respondents No.5 to 9 as PGT English and
- iv) Direct the respondents to reinitiate the selection process for filling up five vacancies in the post of PGT English.

8. In the written statement filed by the respondents, while denying and rebutting the contention of the applicant following averments have been made.

The application suffers on ground of estoppels and acquiescence. The applicant having participated in the selection process without any protest or objection though the name of the eligible candidates has already been circulated and she is now debarred from raising any objection when final selection result has

been published after finalisation of the selection process. The applicant's contention that the selected candidates did not possess the required qualification is incorrect as all of them have possessed the required qualification for empanelment as prescribed under Railway Board's letter dated 4.10.89. In Railway schools there are two different types of promotion of teachers, one functional promotion and the other is non functional promotion. The later is a three tier time bound promotion which is purely non functional which has 3 grades, namely, Basic Grade, Senior Grade and Selection Grade and there is no change in the status of TGT's placed in senior grade or selection grade.

The Selection has been made strictly in accordance with the provisions laid down in the rules for promotion/recruitment to the post of PGTs and there has been no violation of rules. Selection was for filling up of 5 posts and accordingly panel for 5 senior most suitable candidates who qualified in the selection as per extant rules was published. There was no scope to publish names for more than 5 candidates in the select list as the selection was confined to 5 posts only. Finally it has been submitted that the selection is neither illegal nor in violation of the prescribed rules and as such no injustice or irregularities for the selection process have been committed.

9. We have heard the extensive arguments and submission of the learned counsel of both the parties. Learned counsel for the applicant Mr P.K.Tiwari took us through the various documents filed by the applicant as well as the rules. He has also cited the

decision in *Madan Lal and Others vs. State of J & K & Ors.*, (1995)

3 SCC 486, wherein it has been held that :

“...the doctrine of estoppels will not apply when the selection is incurably vitiated.”

He has also cited the decision in *Mumtaj Ali & Ors. vs. State of Assam & Ors.*, 2006 (2) GLT 349, wherein the Hon'ble apex Court had held as under :

“Closely connected with the arguments advanced on the aforesaid issue is the contention of the respondent State, on the basis of the several decisions of the Apex Court as already noticed, that the petitioners having participated in the selection process cannot now be allowed to turn back and call into question the fairness of the same. The law laid down in the case of *Madan Lal* (supra) which forms the basis of the aforesaid contention advanced by the respondent State has subsequently been understood not to be laying down a rules of general application knowing no departures. Ground realities attending a selection process have been responsible for carving out exceptions, one such exception has been recognized to be a situation where there has occurred large scale anomalies in the selection process rendering the same to be a mockery. Authority for the above proposition can be derived from the decision of the Apex Court in the case of *Rajkukar and others vs. Shaktiraj and others* reported in (1997) 9 SCC 527. In such circumstances, the Court is of the view that, in the facts of the present case, it would not be correct to refuse an adjudication of the merits of the dispute raised by the petitioners.”

Learned Railway counsel Mr S. Sengupta at the outset drew our attention to the recruitment rules for filling up the post of PGT. He pointed out that the earlier rules have been amended by the Railway Board's letter dated 4.10.89 and the following provisions was substituted.

✓

18

"Post Graduate Teachers(Rs.1640-2900)

- i) II Class Master's Degree in any of the teaching subject.
- ii) University Degree/Diploma in Education/Teaching.

OR

Integrated two year's Post Graduate course of Regional Colleges of Education of NCERT.

- iii) Competence to teach through the medium/media, as required."

In view of the above provisions the private respondents who were included in the eligibility list are in accordance with these rules.

10. Learned Railway counsel, during the course of hearing has submitted the photo copy of the records pertaining to Selection Committee proceeding of PGT English held on 1.11.04 and 2.11.04. The assessment sheet tabulates the details of the 10 candidates who had been listed for selection. Out of 10 against 2 candidates viz. No.1 (R.C.Sarma) and 9 (D.Mukherjee) it is indicated in the remarks column that they are unwilling. As per the assessment sheet, the remaining candidates, secured the following marks out of total 100 marks :

2. Smt Sudipta Das	74
3. Sri Bharat Karjee	73.57
4. Smt Krishna Dutta	63.14
5. Sri Apuramamoy Ghosh	71.71
6. Sri Subhamoy Sen	69.28
7. Smt Mahua Biswas	69.85
8. Smt Sarmistha Sarkar	62.43
10. Sri N.B.Baul	61"

It is clear from the above assessment sheet that the first candidate (Sl. No.2) secured 74 marks out of 100. The applicant Smt Mahua Biswas had secured over all marks of 69.85 out of 100. If the total marks out of 100 are to be reckoned, in the order of merit she should have figured at Sl.4 of the panel as the 2 candidates above

18

her at Sl.No.4 and 6 have secured 63.14 and 69.28 marks respectively. On enquiry from the Railway counsel as to the reason for placing her below candidates who have secured less marks than her it was explained that this was because she was lower than them in the seniority list of TGTs. While the applicant is at sl.134 of the seniority list Krishna Dutta is at Sl.No.114 and Subhamoy Sen is at sl.No.133.

11. Learned Railway counsel has placed reliance on a decision of Gauhati High Court in Ranjit Kumar Roy & Ors. vs. Tripura Gramin Bank & Ors., 2006(1) GLT 553, wherein the High Court has held as under :

“.....implies that given the minimum merit, the senior would have priority and a comparative assessment of merit is not necessary.”

The case dealt with by the Hon'ble Gauhati High Court was pertaining to promotion on seniority cum merit. In the given case it is fresh selection to the PGT and nowhere in the Recruitment Rules it is stated that it is a promotion. Had it been so, a Physical Education Teacher, who subsequently has acquired Post Graduate can never be considered. Therefore, we are of the view that the said judgment is not squarely applicable in this case.

12. This contention of the learned counsel for the respondents does not appear to be logical and convincing in the face of the fact that in separate column, 15 marks have been separately allocated for seniority. Once a separate marking has been done for seniority than it stands to reason that the candidates should be placed in the select list in the order of merit on the basis

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of the marks which they have secured as a result of assessment by the Selection Committee.

13. It was also submitted by learned Railway counsel that the applicant also appeared for subsequent selection held on 3.10.05, but again she could not be selected, being junior in seniority to Shri Sambhu Chakraborty who, being senior to her was selected.

14. While it is true that laying down criteria for selection is the domain of the expert body/selection committee, at the same time we must observe that such criteria needs to be fair, reasonable and logical. In the instant case we do find that the manner in which the candidates have been placed in the merit list is neither appropriate nor reasonable. It appears unfair that candidates who have secured higher marks should be placed lower than those who have secured lower marks. Once it is a question of inter se merit then position of the candidate in the seniority list should not override the position acquired/secured by candidate in the merit list, specially when seniority has been assigned specific marks in the process of selection. However, we add that once a panel is prepared they are at par in the selection and when the merit is decided giving due marks in seniority a further consideration on seniority cannot be assigned to the candidates. It will be as good as that of giving double benefit to such candidates.

15. Looking to the facts and circumstances of the case we are of the view that since the applicant has come out successful as 4th in the merit list she should have been considered for promotion.

We would, therefore, direct the respondents to re-consider the matter afresh and pass appropriate orders in accordance with the above observations within a time frame of 3 months from the date of receipt copy of this order. For this purpose we remand the matter back to the Selection Committee for re considering the matter in the light of our observation.

With this direction the O.A stands disposed of. No order as to costs.

Chitra Chopra

(CHITRA CHOPRA)
ADMINISTRATIVE MEMBER



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

21

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 01 of 2005

Mahua Biswas ... Applicant

- Versus -

Union of India & Ors. ... Respondents

I N D E X

Sl. No.	Particulars of the documents	Page No.
1.	Application	1 to 20
2.	Verification	21
3.	Annexure-A/1	22 & 23
4.	Annexure-A/2	24
5.	Annexure-A/3 colly.	25 & 26
6.	Annexure-A/4	27 & 28

For use in Tribunal's Office :

Date of filing :

Registration No.

REGISTRAR

placement in the selection grade. Same is the case with a TGT teaching Arts subjects and/or Commerce subjects. In either of the case, he/she would be required to acquire Post Graduate Degree in the relevant disciplines of the Arts and Commerce stream respectively. Under the Recruitment Rules, the qualification for Post Graduate Teacher is a Post Graduate Degree in the concerned subject alongwith necessary teaching experience. In the present case, most of the private Respondents worked as TGT (Science). They do not have any experience of teaching English at that level. They only obtained Post Graduate Degree in English through correspondence course while teaching Science subjects at the level of TGT. However, these private Respondents were not only declared eligible for selection/promotion for PGT (English), but in the final select list, they were included for appointment as PGT (English) to the exclusion of the present Applicant who is a TGT (Arts) and has been teaching English at TGT level. The Applicant also has a Post Graduate Degree in English. Hence in the present application, the legality of the memorandum dated 8.11.2004 by which the final select list of candidates for the vacancies in the posts of PGT (English) was published, is under challenge.

Filed by :

Jaideep Purkayastha
(J. Purkayastha) 3.1.2005
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

O.A. No. of 2005

BETWEEN

Mahua Biswas, wife of Dilip Sarma,
Alipurduar Court, District
Jalpaiguri, West Bengal.

... Applicant

- AND -

1. The Union of India, through the Secretary, Ministry of Railways, Government of India, New Delhi.
2. The General Manager, North East Frontier Railway, Maligaon, Guwahati-781011.
3. The General Manager (Personnel), North East Frontier Railway, Maligaon, Guwahati-781011.
4. The Selection Committee for making selection to the post of Post Graduate Teacher (English) held on 1.11.04/2.11.04 in Railway Higher Secondary Schools, N.F. Railway represented by its Chairman.
5. Sudipta Das, Trained Graduate Teacher, Lumding Railway Higher Secondary School, Lumding, Assam.
6. Bharat Karjee, Physical Training Instructor, Railway Higher Secondary School, Alipurduar Junction, West Bengal.
7. Krishna Dutta, Trained Graduate Teacher, Bani Mandir Railway Higher Secondary School, Siliguri, West Bengal.
8. Apurnamay Ghosh, Trained Graduate Teacher Railway Higher Secondary School, Alipurduar Junction, West Bengal.
9. Subhomay Sen, Trained Graduate Teacher, Railway Higher Secondary School, Alipurduar Junction, West Bengal.

.... Respondents

23
filed by: -
The Applicant
Jharghat:
Jaideep Baruah
Advocate -
3.1.05

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is directed against memorandum dated 8.11.04 issued by the Assistant Personal Officer (W) for General Manager (Personnel), North East Frontier Railway publishing select list of the candidates for the vacancies in the post of Post Graduate Teacher (English).

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the instant application for which she wants redressal is well within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION :

The applicant further declares that the present application is within the period of limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the subject matter of this original application involves legality of the memorandum dated 8.11.2004 by which Respondents No. 5 to 9 were

3 JAN 2005

गुवाहाटी बैठकीड়
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH

O.A. No. 01 of 2005

Mahua Biswas

... Applicant

- AND -

The Union of India & Ors. ... Respondents

SYNOPSIS

Subject matter of the present original application deals with the selection/promotion of the Trained Graduate Teachers (TGT) to the cadre of Post Graduate Teachers (PGT) of English subject. There is a circular of the Railways dated 16.1.2002 which has been issued on the basis of the Railway Board's letter dated 14.12.2001. As per the aforesaid circular a cadre of TGT is a feeder cadre for PGT. In the Railway schools, a Primary Teacher teaches all the subjects to the students of Class-I to IV. Whereas a Trained Graduate Teacher teaches Arts or Science subjects to the students of Class V to X depending upon stream in which he/she is qualified and a PGT teaches the concerned subject of his/her specialisation to the students of Class XI and XII. As per the circular dated 16.1.2002, a TGT can get selection grade of TGT only if he/she completes 12 years of qualifying service in the senior scale of TGT and/or attaining the higher qualification laid down for recruitment to the post of PGT. The circular goes to the extent of giving illustration to the effect that if a TGT is teaching Science subjects, he/she should acquire the Post Graduate Degree in any of the relevant subjects taught in Science for

empanelled on their selection for the post of PGT (English). The Applicant's case in the present application is that except one, all other private Respondents are ineligible for such selection as they do not have the requisite qualification. On the other hand, the Applicant despite being eligible for selection as PGT (English) was not empanelled in the impugned select list dated 8.11.2004. Hence, the present application.

4.2 That the Applicant is presently serving as Trained Graduate Teacher (TGT) (Basic Grade) at Railway Higher Secondary School, Alipurduar Junction, West Bengal. She is post-graduate in English with the qualification of B.A. (Major in English). She joined as primary teacher on 6.1.2000 and became TGT on 13.1.02. As a TGT, the Applicant has been teaching English to the students of Class-IX and X at the Railway Higher Secondary School, Alipurduar Junction.

4.3 That in the Railway schools, there are three different cadres of Primary School Teacher, Trained Graduate Teacher and Post Graduate Teacher. The cadres of teachers with various grades are shown hereinbelow in the form of a chart for the sake of convenience :

Primary School Teacher	Pre-revised scale	Revised scale
(i) Basic Grade	1200-2040	4500-7000
(ii) Senior Grade	1400-2600	5500-8000
(iii) Selection/ Non-functional Grade	1640-2900	5500-9000

Trained Graduate Teacher	Pre-revised scale	Revised scale
(i) Basic Grade	1400-2600	5500-9000
(ii) Senior Grade	1640-3500	6500-12000
(iii) Selection/ Non-functional Grade	2000-3500	7500-9000
Post-Graduate Teacher	Pre-revised scale	Revised scale
(i) Basic Grade	1640-2900	6500-10500
(ii) Senior Grade	2000-3500	7500-12000
(iii) Selection/ Non-functional Grade	2200-4000	8000-13500

In regard to all the three cadres viz. PRT, TGT and PGT, there is time bound upgradation of scales in 12 years period i.e. on completion of 12 years at the basic grade, one automatically gets upgradation to senior grade. Similarly on completion of 12 years in senior grade, one automatically gets upgradation to selection/non-functional grade.

4.4 That the Indian Railway Establishment Manual, Vol. I (Revised Edition, 1989) of the Government of India, Ministry of Railways (Railway Board) contains the provisions for recruitment of teachers in the Railway schools. According to para 178(XIV), for the purpose of recruitment in the basic grade of the PGT, one must have the qualification of Master Degree in the subject concerned from a recognised University with degree or diploma in training/education or 3 years college experience in teaching or 7 years school experience in

teaching exclusive of teaching experience in Higher Secondary Class XI and XII.

4.5 That the extant provisions dealing with the recruitment of PGT do not specifically provide for promotion of TGT to the post of PGT, but the manner in which the qualification of PGT are provided, it is obvious that the TGT having qualifications of teaching in the concerned subject with requisite academic qualification of the concerned subject are eligible for the post of PGT. Here it is pertinent to mention that a primary teacher teaches almost all the subjects to the students of Class-I to IV whereas a TGT teaches Arts or Science subjects (depending upon the teacher's qualification in a concerned discipline) to the students of Class-V to X. In sharp contrast, a PGT teaches only the concerned subject to the students of Class-XI and XII.

4.6 That the office of the General Manager (Personnel), N.F. Railway, Maligaon, Guwahati issued a circular No. E/252/242(W) Pt.IV dated 6.10.04 to the Principals of different Railway Higher Secondary Schools within the jurisdiction of N.F. Railway for selection to the post of PGT (Assamese), PGT (English) and PGT (Bengali). In the present application, we are concerned primarily with the post of PGT (English). In terms of the aforesaid circular, the selection for filling up of five numbers of unreserved vacancies of PGT (English) was to be held and under the heading -

"Names of eligible candidates for promotion of PGT (English)", the names of total 10 numbers of candidates were provided. Amongst these candidates, the names of the private Respondents were also included. It is curious to note that the circular dated 6.10.04 spoke in terms of promotion to the post of PGT (English) though the extant Rules are silent about the promotion to the post of PGT. The rules only provide for direct recruitment. However, the language of the rules is such that those who are already in teaching profession and have the requisite qualification are also eligible for selection to the post of PGT.

Copy of the circular dated 6.10.04 is annexed herewith and marked as ANNEXURE-A/1.

4.7 That as stated earlier, in the circular dated 6.10.04, the names of the private Respondents were also shown including the name of the Applicant. In this connection, it would be appropriate to mention the academic qualification and teaching experience of all the private Respondents, which are as follows :

- (i) The Respondent No. 5 is presently working as TGT (Arts) at the Railway Higher Secondary School, Lumding. The Respondent No. 5 has the qualification of B.A. and M.A. (English).

- (ii) The Respondent No. 6 is a Physical Training Instructor at Railway Higher Secondary School, Alipurduar Junction. The Respondent No. 6 has the

qualification of B.A. Pass course and while working as Physical Training Instructor, he obtained the degree of M.A. (English) from Annamalai University through correspondence course. It is pertinent to mention that the Respondent No. 6 at no point of time taught English to the students. He joined the school as Physical Training Instructor and is still working as such in the aforesaid capacity.

(iii) The Respondent No. 7 is a TGT at Bani Mandir Railway Higher Secondary School, Siliguri. She is graduate in Bio-Science and as TGT taught science subject to the students of Class V to X. It is stated that the Respondent No. 7 at no point of time taught English to the students of Class V to X as TGT. While teaching Science subjects as TGT to the students of class V to X, the Respondent No. 7 obtained the degree of M.A. (English) from Himachal Pradesh University through correspondence course.

(iv) The respondent No. 8 is a Bachelor of Fishery Science. As TGT, he has been teaching Science subject to the students of Class V to X at Railway Higher Secondary School, Alipurduar Junction. While working in the aforesaid capacity, the Respondent No. 8 obtained the degree of M.A. (English) from Annamalai University through correspondence course.

(v) The Respondent No. 9 is a TGT and has been teaching Arts subject to the students of Class V to X at Railway Higher Secondary School, Alipurduar Junction. The Respondent No. 9 is a Graduate (Major in English) and is also post graduate in English from North Bengal University. In terms of the extant Rules, the Respondent No. 9 appears to have the requisite qualification for appointment as post graduate teacher in English.

4.8 That the selection to the post of PGT (English) was held on 1.11.04. In the selection, the candidates No. 1 and 9 were absent and the remaining eight candidates including the present Applicant and the private Respondents participated in the selection. On completion of the process of selection, the Asstt. Personnel Officer (W) vide memorandum dated 8.11.04 published the select list of the candidates for the post of PGT (English). In the select list for PGT (English), the names of the private Respondents No. 5 to 9 appeared to the exclusion of the name of the Applicant.

Copy of the memorandum dated 8.11.04 is annexed herewith and marked as ANNEXURE-A/2.

4.9 That being aggrieved by the memorandum dated 8.11.04 which did not show the names of the Applicant in the select list for the PGT (English), the Applicant

32

submitted a representation dated 15.10.04 to the Chief Personnel Officer (W), N.F. Railway, Maligaon, Guwahati. In the representation, the Applicant expressed surprise at the exclusion of her name from the select list even though she has the requisite qualification and is presently working as TGT (Arts) having a degree of English (Major) at graduation level with Master Degree in English through regular course with required teaching experience in English. The representation of the Applicant was duly forwarded by the Principal, Railway Higher Secondary School, Alipurduar Junction vide letter dated 16.12.04.

Copy of the representation of the Applicant dated 15.12.04 alongwith the covering letter dated 16.12.04 is annexed herewith and marked as ANNEXURE-A/3 colly.

4.10 That the impugned selection of private Respondents for the posts of PGT (English) is incurably vitiated and there are serious irregularities in the preparation of the panel. Amongst the candidates in panel with the exception of possibly one, all other private Respondents do not have the requisite qualification for appointment as PGT (English).

4.11 That it is stated that possibly except the Respondent No. 9, the remaining private Respondents did not have the qualification of B.A. (English) as TGT and they did not teach English as TGT to the students of Class-V to X. While working as TGT, they obtained

degree of M.A. (English) through correspondence course and as such, these private Respondents cannot be considered to be having any teaching experience in English for the purpose of acquiring eligibility for appointment as PGT in English. Under the extant Rules, for recruitment as PGT, one must have the Master Degree in the concerned subject from a recognised University with degree or diploma in training/education or 3 years college experience in teaching or 7 years school experience in teaching exclusive of teaching in Higher Secondary Schools in Class XI and XII. The manner in which the Rules are worded, it is apparent that the teaching experience in any subject cannot be considered adequate to fulfill the requirement of teaching experience for appointment as PGT in English. Common sense demands that for appointment as PGT in English one should have the experience of teaching in English and those who do not have such experience cannot be considered for such appointment and cannot be treated to be in the zone of consideration for such promotion/selection.

4.12 That in this connection, it would be appropriate to refer to the circular issued by the N.F. Railway authorities dated 16.1.02. The aforesaid circular was issued on the basis of the Railway Board's letter dated 14.12.01. The letter of the Railway Board was in regard to qualification of Railway school teachers. The aforesaid letter of the Railway Board was of clarificatory nature in regard to the doubt that had

arisen in respect of the discipline in which a TGT should have post graduate degree for grant of selection grade. It was stated in the aforesaid letter that the matter was examined in consultation with the Directorate of Education, NCT of Delhi and the Ministry of Human Resource Development, Department of Secondary and Higher Education, Government of India who have clarified that the selection grade is to be awarded to the TGTs after 12 years of service in the senior scale of TGT and on attaining the higher qualification laid down for recruitment to the post of PGT to which they are in the feeder category. The aforesaid letter of the Railway Board even gave an illustration to the effect that if a TGT is teaching Science subject, he/she should acquire the post graduate degree in either of the relevant subject taught in Science for placement in the selection grade and similarly a TGT teaching Commerce subject should acquire post graduate degree in either of the relevant subject taught in commerce. Such an illustration also held applicable in regard to Arts and Literary subjects also i.e. those teaching Arts and Literary subjects as TGT were expected to acquire post graduate degree in such subjects in order to get selection grade as TGT.

Copy of the circular dated 16.1.02 issued by the office of the General Manager (Personnel), N.F. Railway, Maligaon, Guwahati-11 is annexed herewith and marked as ANNEXURE-A/4.

4.13 That on perusal of the clarification contained in the letter of Railway Board dated 14.12.01 on the strength of which the circular dated 16.1.02 was issued by the office of the General Manager (Personnel), N.F. Railway, Maligaon, Guwahati, it is apparent that the private Respondents excluding the Respondent No. 9 were not even eligible to be empanelled for selection for the post graduate teacher in English. The Selection Committee therefore acted illegally and arbitrarily in empanelling these private Respondents for appointment as PGT in English.

4.14 That as per the practice followed in terms of extant rules, the selection and promotion to the post of PGT, the qualified TGT in terms of seniority are invited for selection. The ratio between vacancies and the number of candidates invited is 1 : 5, 2 : 8, 3 : 10 etc. In the case of four numbers of vacancies, the employees equal to three times the number of vacancies are to be invited for the purpose of selection. Since in the present case, there were five vacancies in the post of PGT (English), total 15 numbers of TGT having requisite qualification and eligibility for appointment as PGT (English) ought to have been invited for the purpose of selection. In the present case, this was not done. From the perusal of the circular dated 6.10.04, it is seen that only 10 numbers of TGTs were invited for selection against 5 numbers of vacancies in the post of PGT (English).

4.15 That it is pertinent to mention here that even the circular of the Railways dated 6.10.2004 by which the list of eligible candidates for promotion to the post of PGT (English) was published, came under challenge in O.A. No. 1014/2004 before the Calcutta Bench of the Hon'ble Tribunal. The aforesaid original application was filed by one Sambhu Chakraborty who has been working as TGT in Bani Mandir Railway Higher Secondary School, Siliguri. The grievance of Shri Chakraborty in the original application was that he has the requisite qualification for appointment to the post of PGT (English) and that unlike private Respondents, he has the qualification of B.A. Major in English and post-graduate degree in English. Moreover, the aforesaid Shri Chakraborty was also teaching English to the students of Class-V to X. Therefore, in terms of the extant Rules, Shri Chakraborty fulfilled the necessary eligibility criteria to come within the zone of consideration for the purpose of promotion/selection to the post of PGT (English). However, despite being eligible Shri Chakraborty was not invited and in the Circular dated 6.10.2004, his name was not shown in the list of eligible candidates for promotion to the post of PGT (English). It has been learnt by the Applicant that the aforesaid original application is pending disposal before the Calcutta Bench of the Hon'ble Tribunal.

4.16 That it is therefore seen that the methodology adopted by the official Respondents in making

selection/promotion to the post of PGT (English) generated discontentment and anguish amongst the section of eligible candidates. The present Applicant was not well aware of the extant Rules under which the official Respondents carried out the process of selection. Though it is true that the list published in the Circular dated 6.10.2004, surprised this Applicant as she found the names of some of those very candidates who had not been teaching English as TGT. However, since she was not familiar with the extant rules and was also not sure of the post-graduate qualification of private Respondents, therefore, it was considered prudent by the Applicant not to lodge a formal protest at the initial stage without verifying the facts. It was only after the publication of the select list that the Applicant could acquire relevant information along with necessary details pertaining to the qualifications of the private Respondents. Hence, the Applicant could approach this Hon'ble Tribunal only after acquiring these necessary details subsequent to the publication of the select list.

4.17 That it is interesting to observe that the Circular dated 6.10.2004 while publishing the list of eligible candidates used the expression "for promotion of PGT (English)". The Circular dated 6.10.2004, therefore, gave an impression that the selection in question was in fact a promotion to the post of PGT (English). However, it is not known as to under what

provision of law or the rules, the promotions in question were made. In this connection, it is noteworthy that the Establishment Manual of the Railways (Revised Edition, 1989) is totally silent about the methodology of promotion to the post of PGT (English) and it only gives an impression of direct recruitment by which the selection can be made to the post of PGT (English).

4.18 That notwithstanding the relevant qualification of PGT (English) as provided in the Establishment Manual of Railways in its 1989 Edition, there is a clarificatory circular of N.F. Railway dated 16.1.2002 which has been issued on the strength of the Railway Board's letter dated 14.12.2001. The aforesaid circular of the N.F. Railway contains a clarification of the Railway Board in regard to the discipline in which a TGT should have a PG degree for grant of selection grade. To answer this question, it has been clarified that selection grade is to be awarded to the TGT after 12 years of service in the senior scale of TGT and on attaining the higher qualification laid down for recruitment of the post of PGT to which they are in the feeder category. The description of TGT as feeder category for the post of PGT gives an inkling that it is possible to get a promotion from TGT to PGT and that the vacancies in the post of PGT can also be filled through the mode of promotion. However, it is admitted that the Applicant is not aware of any specific provisions or the rules under which such a promotion is

to be made. Be that as it may, what is interesting to observe is that a TGT cannot get the selection grade as TGT without acquiring or attaining the higher qualification laid down for recruitment to the post of PGT. If the aforesaid criteria is followed in regard to private Respondents, then it will be noticed that possibly none of the private Respondents barring one or two has the qualification of getting a selection grade as TGT. When one is not eligible to get selection grade as TGT, then certainly one cannot be eligible to be appointed as PGT in the concerned subject.

4.19 That in the case of Respondents No. 6, 7 and 8, it is seen that they are not teaching English as TGT. The Respondent No. 6 is only a Physical Instructor in the scale of TGT. The Respondents No. 7 and 8 have been teaching Science subjects as TGT. In order to acquire selection grade as TGT, the Respondents No. 7 and 8 are required to have post graduate degree in any discipline of Science. Since Respondents No. 7 and 8 do not have any post graduate degree in any discipline of Science, they cannot get selection grade as TGT. The same holds good for Respondent No. 6 also. When these private Respondents cannot even get selection grade as TGT, there cannot be any question of their promotion as PGT (English) if TGT is considered to be the feeder post for PGT. Moreover, the teaching experience in English in school or college level is integral part of the qualification for appointment as PGT (English). The

Respondents No. 5, 6, 7 and 8 do not have such a qualification and as such, neither of them is eligible to be appointed as PGT (English).

4.20 That to the best of the knowledge of the Applicant, none of the private Respondents has joined as PGT (English). From the facts disclosed in the application, it is clear that selection for PGT (English) is incurably vitiated and the same is liable to be quashed and set aside. Hence, the present case is a fit case wherein this Hon'ble Tribunal may be pleased to pass an interim order directing the official Respondents not to act upon the panel for PGT (English) as contained in the memorandum dated 8.11.2004. The balance of convenience for such an interim order is also in favour of the Applicant.

4.21 That the Applicant files this application bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 Because the private Respondents not being eligible for appointment as PGT (English), they could not have been included in the list of eligible candidates for the purpose of selection of PGT (English) and as such, the consequent selection of PGT (English) is also bad in law and is liable to be quashed and set aside.

5.2 Because in terms of the extant Rules, a TGT in Science by acquiring a PG degree in English, cannot

become eligible for selection as PGT (English). Since the official Respondents allowed candidates of TGT Science with PG degree in English to participate in selection for PGT (English), therefore, the selection for PGT (English) is bad in law.

5.3 Because the experience in teaching in English at the school or college level has to be treated an integral part of qualification for appointment as PGT (English). The private Respondents not having such an experience, could not have been invited for such selection and as such, the selection for PGT (English) is illegal.

5.4 Because in terms of the letter of the N.F. Railway dated 16.1.2002 since the private Respondents are ineligible to get selection grade as TGT, therefore, they cannot be considered eligible for selection as PGT (English).

5.5 Because the impugned selection for PGT (English) is in violation of Article 14 and 16 of the Constitution of India and as such, the same is liable to be quashed and set aside.

6. DETAILS OF REMEDIES EXHAUSTED :

That in the present case, no other adequate alternative remedy is available to the Applicant under law.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

- 8.1 Quash and set aside the list of "eligible candidates for promotion of PGT (English)" as contained in the letter dated 6.10.2004 issued by the office of the General Manager (P), N.F. Railway, Maligoan, Guwahati-11 (Annexure-A/).
- 8.2 Quash and set aside the panel for PGT (English) as contained in the memorandum dated 8.11.2004 issued by the Asstt. Personnel Officer (W) for General Manager (P), N.F. Railway, Maligaon, Guwahati-11.
- 8.3 Quash and set aside the selection/appointment of the Respondents No. 5, 6, 7, 8 and 9 as PGT (English).
- 8.4 Direct the official Respondents to reinitiate the selection process for filling up five vacancies in the post of PGT (English) in terms of the letter dated 6.10.2004.

8.5 Pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case.

8.6 Award cost of the application.

9. INTERIM ORDER PRAYED FOR :

In the facts and circumstances of the case, the Applicant prays that the Hon'ble Tribunal may be pleased to direct the official Respondents not to act upon the panel for PGT (English) as contained in the memorandum dated 8.11.2004 and be further pleased to restrain the private Respondents from joining as PGT (English).

10.

The Application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

(i) I.P.O. No. : 20G 117250
(ii) Date : 03.01.2005
(iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

V E R I F I C A T I O N

I, Mahua Biswas, wife of Shri Dilip Sarma, aged about 32 years, resident of Alipurduar Court, District Jalpaiguri, West Bengal, do hereby solemnly affirm and verify that the statements made in the accompanying application in paragraphs 1 to 4.5, 4.7, 4.9, 4.10, 4.11

4.13 to 7 are true to my knowledge ; those made in paragraphs 4.6, 4.8 & 4.12 being matters of records are true to my information derived therefrom. The grounds urged are as per legal advice. I have not suppressed any material fact.

And I sign this verification on this the 3rd day of January, 2005 at Guwahati.

Mahua Biswas.

- 23 -

ANNEXURE-A/ 1

No.E/252/242(W)Pt.IV

Office of the General Manager (P)
Maligaon, Guwahati
Dated : 06.10.04

Principal, Rly.H.S. School/APDJ
Principal, Rly NVP/Rly.H.S. School/MLG
Principal, Rly NVP/Rly.H.S. School/MLG
Principal, Rly NVP/Rly.H.S. School/MLG
Principal, Rly NVP/Rly.H.S. School/LMG
Principal, Bani Mandir Rly.H.S. School, SJUJ

Sub : Selection for the post of PGT (Assamese),
PGT (English) and PGT (Bengali).

It has been decided to hold the selection for filling up of the following vacancies in the categories mentioned against each category as under :

No. of vacancies

Sn	Category	Scale	Total vacancies	Breaking up of vacancies
1	PGT(Assamese)	Rs.6500-10500/-	01	UR-1 SC-Nil ST-Nil
2	PGT(English)	-do-	05	UR-5 SC-Nil ST-Nil
3	PGT(Bengali)	-do-	01	UR-1 SC-Nil ST-Nil

Date of selection

Sn	Category	Scale	Date of selection and time	Venue of selection
1	PGT(Assamese)	Rs.6500-10500/-	29.10.04 10Hrs.	CPO Office/MLG
2	PGT(English)	-do-	01.11.04 10Hrs.	CPO Office/MLG
3	PGT(Bengali)	-do-	02.11.04 10Hrs.	CPO Office/MLG

The following eligible candidates may be directed to appear in the selection accordingly in the above mentioned date. Controlling Officer, Principals should spare staff listed below to attend the above selection.

Name of the eligible candidates for promotion of PGT Assamese

No.	Name	Designation	Working under
1	Sri Nitish Ch. Sharma	TGT	RHSS/NVP/MLG
2	Sri Dilip Kumar Nath	TGT	RHSS/MLG
3	Sri Dilip Bora	TGT	RHSS/MLG

Certified to be true copy

Murkayastha
3/1/05
(T. Purkayastha)
H. Vocate

Name of eligible candidates for promotion of PGT
(English)

1. Sri R.C. Sharma	RHSS/MLG
2. Smt. Sudipta Das	RHSS/LMG
3. Sri Bharat Karjee	RHSS/APDJ
4. Smt. Krishna Dutta	RHSS/NVP/MLG
5. Sri Apurnamoy Ghosh	RHSS/APDJ
6. Sri Subhamay Sen	RHSS/APDJ
7. Smt. Mahua Biswas	RHSS/APDJ
8. Smt. Sarmistha Sarkar	RHSS/APDJ
9. Sri Debasish Mukherjee	RHSS/LMG
10. Smt. N. Basu Baul	RHSS/LMG

Name of eligible candidates for promotion of PGT
(Bengali)

1. Debasish Choudhury	RHSS/APDJ
-----------------------	-----------

All the above candidates may be informed that if anybody is unwilling to appear in the selection test should inform within 7 days from the date of issue of notification. There will be no absentee selection.

Sd/- J. Rabi Das
Sr. Personnel Officer (W)
For General Manager(P)

Copy forwarded for information and necessary action to:

1. DRM(P), KR, APDJ & LMG
2. PS to CPO. He is requested to keep ACRs of the above candidates in readiness.

J. Rabi Das
Sr. Personnel Officer (W)
For General Manager(P)

Certified to be true copy

J. Rabi Das
31/1/05
(J. Rabi Das)
F. V. R. C. O.

ANNEXURE-A/ 2

N.F. RAILWAY
MEMORANDUM

The selection for the post of PGT (English) and PGT (Assamese) were held on 01.11.04 and 02.11.04.

The following candidates have been declared empanelled for the posts as shown below :

For PGT (English) in scale Rs.6500-10500/-

- 1) Smt. Sudipta Das, Rly H.S. School, LMG
- 2) Shri Bharat Karjee, Rly H.S. School, APDG
- 3) Smt. Krishna Dutta, N.V.P. Rly H.S. School, MLG
- 4) Shri Apurnamoy Ghosh, Rly H.S. School, APDJ
- 5) Shri Subhomay Sen, Rly H.S. School, APDJ

Red Seal

For PGT (Bengali) in scale Rs.6500-10500/-

- 1) Shri D. Chowdhury, Rly H.S. School, APDJ

For PGT (Assamese) in scale Rs.6500-10500/-

- 1) Shri Nitish Ch. Sarma, N.V.P. Rly. H.S. School, MLG

Sd/- (P.K. Das)
Asst. Personnel Officer (W)
For General Manager (P)

No. E/252/242(W)Pt.II

Date : 08.11.04

- 1) DRM(P) KIR, APDJ & LMG
- 2) Principal, Rly.H.S. School, Netaji Vidya Pith Rly.H.S. School/MLG.
- 3) Principal, Bani Mandir Rly.H.S. School, SGLI
- 4) Principal, Rly.H.S. School, APDJ
- 5) Principal, Rly.H.S. School, MLG
- 6) Principal, Rly.H.S. School, LMG
- 7) Principal, Rly.H.S. School, BPB.

Sd/-

For General Manager (P)

*Certified to be true copy
J. Purkayastha
Advocate
3/11/05*

*19th Comptd
on 19th Nov 2004
Ex-2.191*

N.F. Rly.

No: AS / 2 / Staff / Selec / Pt-1

Office of the
Principal
Rly. H. S. School
Alipurduar Jn
Date : 16-12-04

To

GM (P) / W
N.F. Rly / MLG

Please find enclosed an appeal of Smt. M. Biswas, TGT (Arts),
Rly. H.S. School / Apdj.
The appeal is Self-explanatory and forwarded for disposal please.

Enclo : As above.

(Dipak Mukherjee)
Principal
Rly. H.S. School / Apdj.

Copy To the
Staff concerned

Certified to be true copy

Ghundegosha
(J. Purkayastha) 3/1/05
Advocate

TO,

THE CHIEF PERSONNEL OFFICER (W)
N.F. RAILWAY,
MALIGAON, GUWAHATI.

THROUGH PROPER CHANNEL.

SUB: PGT (ENGLISH) SELECTION.

SIR,

Respectfully I would like to draw your kind attention to the above said subject.

That Sir, PGT(English) selection (Promotional) was held on 01-11-2004 and I was also one of the candidates among the ten candidates called for the interview. But to my utter surprise I found that my name was not in the empanelled list.

According to me I have the requisite qualification and I am working as TGT(Arts) having a degree as English major in graduation level and completed my master's degree through regular course.

Therefore, I am feeling extremely deprived and it is my earnest request to you to kindly review the matter and thus oblige.

Thanking you,

Date: 15-12-2004.

Place: Alipurduar Jn.

Yours faithfully,

(Mahua Biswas), TGT(Arts)
Railway H.S.School
Alipurduar Jn.

Certified to be true copy

J. Purkayastha
3/1/05
(J. Purkayastha)
Advocate

ANNEXURE-A/4

NORTHEAST FRONTIER RAILWAY

OFFICE OF THE
GENERAL MANAGER (P)
MALIGAON : GUWAHATI-11

No. S/227/144 Pt. XI (C)

Dated 16.01.2002

To

CM (CON)/MLG, FA & CAO/MLG
All DRMs, All ADRMs, All Sr. DPOs.
Dy. GME/NDQS, DDWg, All DIOs, WAO/NBQs, DBWS
Railway School/NV/MLG, Railway School/Maligaon,
Railway School/APDJ, SGUJ, NJP, LMG, BPB & DWR,
SPO/W, APO/W, CSEW/MLG
The CS/NFREU, NFRMU, ALSCTREA & NFROBCEA/MLG.

Sub : Qualification of Railway School Teachers.

Ref : Board's letter No.E (P&A)-1-87/PS-5/PE-5 dated
11.1.88 and 15.4.88.

A copy of Railway Board's letter No. E(P&A) I-
2001/PS-5/PE-4 dated 14.12.2001 (RDS No. 239/2001) on
the above subject is forwarded for information and
guidance please.

Sd/-
15.01.02
(P.C. Johnson)
For GENERAL MANAGER (P)/MLG

(Copy of Board's letter No. E(P&A) I-2001/PS-5/PE-4
dated 14.12.2001)

Sub : Qualification of Railway School Teachers.

Ref : Board's letter No.E (P&A)1-87/PS-5/PE-5 dated
11.1.88 and 15.4.88.

A doubt had arisen in respect of the
discipline in which a TGT should have PG degree for
grant of Selection Grade. The matter has been examined

Certified to be true copy
Ghanshyam Datta
31.1.02
(J. Datta)
Advocate

- 26 -

in consultation with the Directorate of Education, Government of NCT of Delhi and the Ministry of Human Resource Development, Department of Secondary and Higher Education, Government of India who have clarified that Selection Grade is to be awarded to the TGTs after 12 years of service in the Senior Scale of TGT and/or attaining the higher qualification laid down for recruitment of the post of PGT to which they are in the feeder category. To illustrate if a TGT is teaching Science subjects he/she should acquire a Post Graduate degree in either of the relevant subjects taught in Science for placement in the Selection Grade. Similarly a TGT teaching Commerce subjects should acquire Post Graduate degree in either of the relevant subject taught in Commerce. Likewise in Arts and Literature subjects also.

Sd/-
(NADIRA RAZAK)
JOINT DIRECTOR ESTT (P&A)
RAILWAY BOARD

Nadira Razak Deen

7

Certified to be true
J. M. Jhunjhunwala
(J. M. Jhunjhunwala) 3/11/05
Advocate

- 9 MAY 2005

RECORDED COPY FOR
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :::: GUWAHATI

M. Mahanta
Dy. Chief Personnel Officer 1/R
N.F. Railway, Maligaon
Guwahati-11

Recd by :
Sukhom San Gopal
Railway Apprentice
Rly. Secy. Office
9.5.2005

IN THE MATTER OF :

O.A. NO.1..... OF 2005

Mahua Biswas

..... Applicant

- Vs -

1. Union of India.
2. G.M/N.F. Railway, Maligaon.
3. G.M/Personnel/N.F. Railway.
4. The Selection Committee for
making Selection for the
post of Post Graduate Teacher
(English) held on 1.11.84/2.11.84.
5. Sudipta Das
TGT/Lumding Railway H.S. School/
Lumding, Assam.
6. Bharat Karjee,
Physical Training Instructor,
Railway H.S. School, -
Alipurduar Junction.
7. Krishna Dutta, TGT,
BaniMandir, Rly. H.S. School,
Siliguri, West Bengal.

8. Apurnamay Ghosh, TGT,

Alipurduar Junction.

9. Subhoney Sen, TGT,

Railway H.S. School,

Alipurduar Junction, West Bengal.

..... Respondents.

IN THE MATTER OF :

Written Statement for and on behalf
of the respondents.

The answering respondents most respectfully
beg to submit as under :

1. That, the answering respondents have gone
through the copy of the application filed by the applicant
and have understood the contents there-of.

2. That, the application suffers for want of valid
cause of action and/or right for filing the application.

3. That, the application is not maintainable in
its present form and is fit one to be dismissed in limine.

4. That, for the sake of brevity, the meticulous
denial of each and every statements of the applicant has
been avoided without admitting the correctness of such
statements. The respondents do not admit any of the
allegations/statements of the applicant except those which
are either borne on records or are specifically admitted

M. Mahanta
D.Y. Chief Personnel Officer / JR
N.F. Railway, Maligaon
Guwahati-11

hereunder and the applicant is put to strictest proof of these statements which are either not borne on records or are not specifically admitted by the respondents. Further, the respondents have been advised to confine their replies only to those allegations which are relevant for purpose of arriving at a decision in the case.

5. That, the application suffers on ground of estoppel and acquiescence. The applicant participated in the selection process without raising any protest or objection though the names of the eligible candidates were already circulated under G.M(P) N.F. Rly/Maligaon's notification No. E/252/242(W) Pt.IV dated 6.10.2004, a copy of which has been annexed to the application as Annexure-A/1 and that she is now debarred from raising any objection when final selection result has been published after finalisation of the selection process and promotion order of some personnel were also issued.

6. That, the case is vexatious one without any substance and is the outcome of her after-thought action.

7. That, with regard to averments at paragraphs 4.1 of the application it is submitted that the allegations made in this paragraph are quite incorrect and hence denied herewith. It is not correct that except one, all other private candidates who were empanelled for promotion to the post of PGT (English) vide memorandum No. E/252/242(W) Pt.II dated 8.11.04, are ineligible for such selection. In fact, all of them are possessing the required qualification for

-4-

empanelment as prescribed under Railway Board's letter No. E(P&A) I-87/PS-5/PE-9 dated 4.10.1989.

The applicant has not elaborated as to in what respect she contends that they are ineligible. Her contentions are unacceptable and denied herewith and she is put to strictest proof of her of such unwarranted allegations/averments.

In this connection it is to mention herein that the Railway Board vide letter dated 4.10.89, as mentioned herein above, have prescribed qualification for promotion as well as recruitment of teachers in modification of their earlier orders. According to this letter dated 4.10.1989, the qualification for filling up the posts of PGT's (Post Graduate Teachers) either by promotion or by Direct Recruitment, are same except in respect of relaxation of IIInd Class Master's Degree for promotion having 5 years experience as TGT's.

Thus, the required qualifications as prescribed are as under :

- i) II nd Class Master's Degree in any of the Teaching subjects.
- ii) University Degree/Diploma in Education/ Teachings.

or

Integrated two year Post Graduate Course of Regional Colleges of Education of NCBET.

- iii) Competent to teach through the medium/

M. M. M.
Dy. Chief Personnel Officer /IR
N.F. Railway, Maligaon
Guwahati-11

-5-

medium/media, as required.

It is also to mention herein that all those who have been expanelled for promotion to the post of PGT (English) vide said memorandum dated 8.11.04 are possessing the required qualification prescribed/mentioned as above. Thus, the present application is not tenable and is fit one to be dismissed in limine.

8. That, with regard to averments at paragraph 4.2, of the application, it is submitted that the respondents admit only those which are borne on records.

9. That, the allegations and contentions of the applicant as put forward under paragraph 4.3 of the application are not correct and hence these are denied ~~now~~ herewith.

It is submitted that the applicant has not presented the correct picture and also rules. No ~~other~~ allegations/averments are accepted except those which are borne on records or based on rules.

It is to mention herein that in Railway Schools, there are two different types of promotion of teachers as mentioned below :

I. Functional Promotion :-

It is normal promotion, based on qualification, seniority and suitability.

M. M. Nahar
Dy. Chief Personnel Officer / M.R.
N.F. Railway, Maligaon
Guwahati-11

II. Non-Functional Promotion :-

It is a 3 tier time bound promotion which is purely non-functional i.e. there are following 3 tiers :-

TGT (Basic Grade) in scale Rs.5500-9000/-

After 12 years.

TGT (Senior Grade) in scale Rs.6500-10500/-

After 12 years with possessing prescribed qualification of PGT in the teaching subject/stream limited to 20% of Senior grade.

TGT (Selection Grade) in scale of Rs.7500-12000/-

There will be no change in the status of TGT's placed in senior grade or selection grade.

Remarks

From above (i) it is evident that there are definite Rules for Promotion/Recruitment for the post of PGT's introduced with effect from 4.10.1989 modifying all previous orders.

(ii) it also appears that the applicant tried to incorporate Rules for placement in Selection Grade (non-functional) in Functional Promotion from TGT to PGT.

-7-

The applicant has given different pay scales of different categories of teachers prescribed for non-functional promotion i.e. placement in senior Grade after 12 years of service in Basic Grade, and, selection grade after 12 years of service in Sr. Grade and contends/claims that these are automatic promotion. Such contentions of the applicant are not correct in view of the fact that these grades are granted after fulfilling certain conditions and all these are not related to normal promotion (i.e. functional promotion) and hence it cannot be applied to non-functional promotion.

It is submitted that the contention of the applicant is misleading only and hence not accepted.

10. That, the contentions/averments as put forward in paragraphs 4.4 and 4.5 of the application are not correct and hence not admitted.

It is to mention herein that the qualifications prescribed for the post of PGT's prior to 4.10.1989 as quoted by the applicant appeared in the Indian Railway Establishment Manual Volume I (1989). But these rules have been revised by the Railway Board with effect from 4.10.1989 modifying earlier orders, as mentioned at paragraphs 7 and 9 here-in-before.

It is not correct to say that the extant provisions for dealing with the recruitment of PGT do not specifically provide for promotion of TGT to the

-8-

post of PGT. In fact, Railway Boards letter dated 4.10.1989, clearly spelled/specify the rules for making promotion/recruitment to the post of PGT's and laid rules are to be strictly followed in cases of promotions and recruitments etc and no logic can dilute it.

In this connection, a copy of the Railway Boards' letter No. E(P&A) I-87/PS-S/PE-9 dated 4.10.1989 is annexed hereto as Annexure-I for ready perusal.

11. That, the averments and contentions of the applicant as put forward through paragraph 4.6 of the application are not correct and hence denied herewith.

It is not correct that rules only provide for Direct Recruitment. In fact, vide Railway Boards letter dated 4.10.1989, Rules have been provided for Direct Recruitment as well as promotion.

Further, in terms of the Railway Boards letter No. E(N.G.)I-2000/TR/12 dated 18.6.2000, there are no fixed percentage for recruitment and promotion in the categories of PGT's and TGT's and the practice prevalent in this regard is to fill up the posts by promotion to the extent serving teachers with requisite qualifications are available and found suitable and that the short fall, if any, be made good by Direct Recruitment.

In this connection, a copy of the Railway Boards letter dated 28.6.2000 is also annexed hereto as Annexure-II for ready perusal.

M. J. Ghosh
M. J. Ghosh
Chief Personnel Officer / IR
N.F. Railway, Maligaon
Guwahati-11

-9-

12. That, with regard to averments at paragraph 4.7 of the application it is submitted that those averments which are borne on records are only accepted as correct and correctness of the rest of the statements are not admitted and the applicant is put to strictest proof of such averments/ contentions.

It is also to mention here-in that while the applicant has asserted that all the candidates/respondents 5 to 9 do possess the post Graduate degree M.A. in English (which is a must for all PGT (English) post, he could not establish and say as to in what respect these respondents 5 to 8 do not have necessary qualification as prescribed in Railway Board's letter dated 4.10.1989 as mentioned herein before.

13. That, with regard to averments at paragraph 4.8 of the application it is submitted that the respondents admit all these statements only which are borne on records. The selection for filling up of 5(five) posts of PGT (English) was held and accordingly panel for 5 Senior most suitable candidates who qualified in the selection as per extant rules, was published. There was no scope to publish names for more than 5 candidates in the select list as selection is confined to 5 posts.

14. That, with regard to averments at paragraph 4.9, of the application, it is submitted that on application of 3^{rd} formula, (where 'X' means number of posts), 15 Senior

-10-

most eligible candidates could have been called for selection against 5 posts of PGT (English). But there were only 10 eligible candidates including the applicant and as such all such 10 candidates were called for selection. This, however, does not mean that all those appeared before the selection or secured pass marks should have been selected or find place in the select list. In fact against 5 posts of PGT (English) names of senior most 5 suitable candidates who also qualified in the selection, appeared in the select list against 5 posts of PGT (English).

No such representation as mentioned by the applicant appears to be on record. However, on going through the Annexure 3 (said to be copy of the representation dated 15.12.2004 of the applicant) it is seen that the applicant has not spelled/brought in any new specific point or valid grounds which might require/call for further review/reconsideration of her selection matter and that after going thoroughly into the matter and Annexure 3 to the application and re-examination of the case after due application of mind, it is rather observed that no injustice or irregularities in the selection process was committed and there is no scope for further consideration/review of the matter or empanelling her for the post of PGT (English). The selection result was published as per rules.

15. That, the allegations brought in the paragraphs No. 4.10, 4.11, 4.12 and 4.13 of the application are quite

-11-

untenable and unacceptable as per extant rules on the subject of the selection and hence are denied herewith emphatically. The applicant has failed to state clearly that the persons selected did not fulfil the qualification prescribed by Railway Board vide their letter dated 4.10.1989 as mentioned herein before.

It is true that prior to 4.10.1989 there were provisions to take 3 years college experience or 7 years school experience in absence Degree/Diploma in Education/Teaching as a criterion of eligibility for the post of PGT. But as, mentioned in the foregoing paragraphs of this written statement, the Railway Board have revised the qualification aspect for the post of PGT's vide their letter dated 4.10.1989. As such, since then experience cannot be insisted upon for promotion/recruitment for the post of PGT's.

Further, it is also submitted herein that the allegations as made at paragraph 4.12 of the application is baseless and hence not acceptable. The applicant has quoted reference of eligibility for non-functional promotion as TGT (selection grade) in scale Rs. 7500-12000/- which is even higher than that of PGT (Basic Grade) in Scale Rs. 6500-10500/-. Thus, the conditions laid down for placing a TGT in TGT (Selection Grade), a non-functional promotion, cannot be imposed in case of functional promotion to the post of PGT's for which specific Rules are existing.

It is also quite wrong to say that the candidates in the select list are not eligible for the post of PGT's on the basis of Rules prescribed for placement of TGT's in the selection Grade. Her claim is unfounded.

It is denied that the private respondents (i.e. 5 to 8) were not eligible to be empanelled for selection for the Post Graduate Teacher in English or that the selection committee acted illegally and arbitrarily in empanalling these respondents for PGT (English) posts.

16. That, with regard to averments at paragraphs 4.14, 4.15, 4.16, 4.17, 4.18 and 4.19 of the application, it is submitted that all the allegations as made in these paragraphs are baseless and unfounded and hence denied herewith.

In this connection the following are submitted :

- a) As regards claim for calling 15 Senior most candidates it is submitted that there were only 10 eligible candidates at the time of assessment for initiating the selection and question of calling more candidates did not arise.
- b) Regarding the case filed by Sri Sambhu-Chakraborty (O.A. No. 1014/2004 before the Calcutta Bench of the CAT), it is submitted that Sri Chakraborty, TGT of Bani-Mandir Railway H.S. School/Siliguri Junction, failed to produce his certificates of having

his Master Degree in English, on or before the date of assessment made for selection, and, as such he could not be called for selection. Necessary reply has already been filed before the Hon'ble CAT/Calcutta. No decision still received and his alleged cause of action is quite different one and same can have no application in the present case. More so, Sri Chakraberty is not a party in this case and after participating in the selection without protest the applicant is also debarred to raise such question.

- e) Her ignorance about rules or her plea for her inability to file protest against holding of the selection or filling of this Court case due to non-availability of the particulars etc of candidates are not tenable and these are outcome of her after-thought action.
- a) It is also submitted that she should have acquainted herself with the selection procedure and rules prior to filing the Court Case and should have appreciated the distinction between functional and non-functional promotions instead of creating confusion on these issue as the present selection relates to functional promotions to the post of PGT's in terms of Rly. Beard's circular dated 4.10.1989.

M. N. Ray

Dy. Chief Personnel Officer / 1/R
N.F. Rajkay, Maligaon
Guwahati-11

17. That, with regard to the statements made at paragraph 20 of the application it is submitted that it is quite incorrect to say that none of the empanelled candidates have for promotion to the post of PGT (English) joined yet as PGT (English). In fact, first 3 out of 5 empanelled candidates were given promotion orders and 2 of them have already joined as PGT (English) on 1.12.2004 and 10.2.2005 and promotion order of remaining candidates were ~~also~~ also under issue. It is denied that the selection for the post of PGT (English) was vitiated, as alleged.

It is submitted that the entire selection was held properly after observing all the required formalities as required under extant rules and procedures and there was no irregularity or illegality in holding the selection and question of quashing the selection or issuing any interim order does not arise on consideration of the fact of the case and relevant selection rules/procedures.

18. That, with regard to averments made at paragraph 4.21, of the application it is denied that the application was filed bonafide for securing the ends of justice.

19. That, in view of what have been submitted in the foregoing paragraphs of this written statement, none of the grounds for relief as mentioned at paragraph 5 of the application and relief as sought for under paragraphs 8 and 9 of the application, are sustainable under law and fact of the case and the prayers of the applicant are liable to be rejected.

It is emphatically denied that :

- a) the respondent Nos. 5 to 9 are not eligible for appointment as PGT (English) or being called for selection or that the selection of candidates for PGT (English) is bad in law and liable to be quashed.
- b) the extant rules prohibits a TGT in Science who also possess Master Degree in English for being called for selection as PGT (English) and also for participation in selection.
- c) experience in teaching in English at school and college level is to be treated as integral part of the qualification for appointment and as such private respondents could not be called in the selection.
- d) since in terms of letter of N.F. Rly dated 10.1.2002 private respondents are ineligible to get selection grade TGT, hence they cannot be eligible for selection as PGT (English).
- e) the impugned selection of TGT (English) is in-violation of Art. 14 and 16 of the Constitution of India and selection is liable to be quashed etc.

20. That, it is submitted that all the actions taken in the case by the respondents are quite legal, valid and

proper and in consonance to the provisions of extant rules on the subject and have been taken after due application of mind and that the present case of the applicant is based on wrong premises and suffers from misconception and misinterpretation of rules and laws on the subject besides being based on surmise only.

It also appears that :

a) the applicant has failed to appreciate the different types of promotion of teachers i.e.

I. Functional Promotion

and

II. Non-functional promotions
and eligibility criterion decided
there under.

b) the applicant has tried to incorporate Rules for placement in selection grade (non-functional) in functional promotion from TGT to PGT .

c) the applicant has failed to appreciate the changes in the selection procedure brought under Railway Board's Circular dated 4.10.1989 modifying all previous orders.

d) 3 years college experience or 7 years school experience are no longer to be insisted in view of Railway Boards' Circular/order dated 4.10.1989.

- e) the conditions laid down for placing a TGT in TGT (Selection grade), a non-functional promotion, cannot be imposed in case of functional promotion of PGT's for which specific rules are existing.
- f) Sambhu Chakraborty's case on which no decision was given by Hon'ble CAT/Calcutta Bench has no application in the case and same stands on different footing and it cannot be cited as a precedent.
- g) Panel for PGT (English) has been correctly drawn up and no illegality perpetrated in permitting the candidates for appearing in the selection and being empanelled.
- h) From her averments/admissions, it appears that the applicant is not aware of the specific provisions of rules under which such promotion is made etc.

21. That, necessary enquiries are still under process to ascertain further information etc. if there be any, and the answering respondents / crave leave of the Hon'ble Tribunal to file additional written statement if found necessary, after such enquiries, for ends of Justice.

22. That, under the facts and circumstances of the case, as stated in the foregoing paragraphs of the written statement, the instant application is not maintainable under law and fact of the case and is liable to be dismissed.

VERIFICATION

I Shri A. Kispotta son of late Andreas Kispotta aged about 55 years, by occupation, Railway service, working as Dy. Chief Personnel Officer of N.F. Railway Administration, Maligaon, do hereby solemnly affirm and state that the statements made in paragraphs 1 and 4 are true to my knowledge and those made at paragraphs 7, 9, 10, 11, 12, 13, 14, 15, 16 and 17 are based on information as gathered from records of the case which I believe to be true and the rest are my submissions before the Hon'ble Tribunal and I sign this verification on proper authority.


Shri A. Kispotta
Dy-Chief Personnel Officer, N.F. Railway, Maligaon
Guwahati-11

NORTHEAST FRONTIER RAILWAY
MALIGAON
FOR AND ON BEHALF OF UNION OF INDIA.

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ANNEXURE - I

GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)

RBE NO. 252/89.

Clearance
at SIC 173

No: EXP/RAIL-87/PS-5/PE-9

New Delhi, dated 10/10/1989

The General Managers
All Indian Railways
including C.L.W., D.L.W., I.C.F. &
Director General/R.D.S.O.

elio

Subject: Revision of qualifications of Teachers in
Railway schools.

The question of updating the qualifications in line with those prescribed by Kendriya Vidyalaya Sangathan and Delhi Administration for the following categories of Railway school teachers has been examined by the Board:-

1. Primary Teachers (Rs. 1200-2040)
2. T.G.T. (Rs. 1400-2600)
3. P.G.T. (Rs. 1640-2900)

2. Accordingly, in modification of the earlier orders, in so far as the qualifications in respect of the above categories are concerned, the Ministry of Railways have decided that the qualifications as indicated in the Annexure to this letter will be applicable for promotion/recruitment to these categories. The qualifications prescribed are the same for both direct recruitment as well as promotion, except to the extent provided in the qualifications themselves. Also, preference may be given, in case of direct recruitment to candidates possessing qualifications higher than those prescribed for the post.

3. The above orders will take effect from the date of issue of this letter. Any selections already initiated would be conducted and finalised based on the notifications already issued.

4. The receipt of this letter may kindly be acknowledged.

5. Hindi version is attached.

D.A.: Two.

K //
(K. VENKATESAN)
DIRECTOR ESIT. (P&A)
RAILWAY BOARD.

SPO/W. for n/a

To be put up to CPO on return

Contd... 2/-

Quir
CPO/A 19/10

20
No:E(P&A) I-87/PS-5/PE-9

New Delhi, dated 4-10-1989.

Copy forwarded to FA & CAOs, all Indian Railways including C.L.W., D.L.W., I.C.F., and R.D.S.O.

(K.VENKATESAN)
DIRECTOR, ESTT.(P&A)
RAILWAY BOARD.

No:E(P&A) I-87/PS-5/PE-9

New Delhi, dated 4-10-1989.

Copy (with 35 spares each) to:-

1. The General Secretary, N.F.I.P.
3-Chelmsford Road, New Delhi.
2. The General Secretary, A.I.R.F.
4-State Entry Road, New Delhi.
3. All Members of the National Council,
Departmental Council and Secretary Staff Side,
13-C Erozeshan Road, New Delhi.

Subcommittee
for Secretary/Railway Board.

Copy to:-

PS to Adviser (Staff).

SPAs to EDPC-I, EDPC-II, EDE, EDE(IR), DE(P&A), EDE(N),
JDE(W), DDE(W), DDE(G) II (with two spares).

E(G), E(NG) I, E(NG) II, *E(W) * with 4 spares.

PC-III, PC-IV Branches of Railway Board.

QUALIFICATIONS FOR TEACHING POSTS IN RAILWAY SCHOOLS

S. NO.	Posts	Minimum qualifications
1.	Primary Teachers (Rs. 1200- 2040)	<p>1) Higher Sec. with JBT (2 yrs.) or equivalent OR Intermediate with JBT (1 yr.) or its equivalent. OR Senior Sec. (plus 2) examination with JBT (1 yr.) or its equivalent.</p>
2.	Trained Graduate Teachers (Rs. 1400-2600)	<p>1) IInd Class Bachelor's degree with one of the following group of subjects :-</p> <ul style="list-style-type: none"> i) Physics, Chemistry and one subject out of Maths/Botany/Zoology. ii) Botany, Zoology and one subject out of Physics/Chemistry. iii) English Literature/Hindi Literature/ Sanskrit Literature. iv) Any two subjects out of English, Maths, Commerce, Economics, Geography, Pol.Science, History, Agriculture. <p>2) University Degree/Diploma in education/teaching OR 4 yrs. integrated degree course of Regional Colleges of Education of NCERT.</p> <p>3) Competence to teach through the medium/media as required.</p>

Modified side
SN - 44

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2

3

Note: The condition of II Class in Bachelor's Degree can be relaxed in respect of promotee candidates who have at least 5 yrs. experience as Primary Teachers and also for candidates (both promotee & Direct Recruits) who have a post Graduate Degree in any of the teaching subjects referred to in Para 1 above.

3. Post Graduate Teachers (Rs.1640-2900)

- i) II Class Master's Degree in any of the teaching subjects.
- ii) University Degree/Diploma in Education/Teaching.

OR

Integrated two year's Post Graduate course of Regional Colleges of Education of NCERT.

- iii) Competence to teach through the medium/media, as required.

Note: The condition of II class in Master's Degree can be relaxed in respect of promotee candidates who have at least 5 years experience as TGTs.

RBE No. 127/2000

S.C. No. 12 to M.C. No. 24

51

GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No.E(NG)I-2000/TR/12

New Delhi, dated 28-6-2000

The General Managers(P)
All Indian Railways and
Production Units
(As per standard list)

APo/JW

SWR

Sub: Inter/Intra Railway own request transfer of
TGT/Post Graduate Teacher of Railway School.

One of the Railways has raised a query as to whether in the event of non-availability of suitable eligible teachers from the lower grade, by way of promotion, requests for inter/intra-railway transfer in the categories of TGTs/PGTs can be entertained or otherwise.

2. As the Railways are aware, there are no fixed percentages for recruitment and promotion in the categories of PGTs and TGTs and the practice prevalent in this regard is to fill up the posts by promotion to the extent serving Teachers with requisite qualifications are available and found suitable and the shortfall, if any, made good by direct recruitment. The matter has been examined by the Ministry of Railways in this background. It has since been decided that requests from TGTs/PGTs for their inter/intra-Railway transfers on acceptance of bottom seniority in the respective recruitment (basic) grade may be considered against posts which cannot be filled by promotion for want of suitable qualified serving teachers in the relevant unit and are otherwise necessarily to be filled by direct recruitment from the open market. For this purpose the Railways etc. may evolve a suitable system in case the same does not already exist.

Please acknowledge receipt

Office of the
General Manager

Mr. Bal D. Lalwani

Date
Pass

to the concerned
Officer

16/6/2000

(J.S. Sushma)
Joint Director Estt.(N)
Railway Board

No. E(NG)I-2006/TR/12

New Delhi, dated 28-6-2006

Copy forwarded to:-

1. The General Secretary, All India Railwaymen Federation, Room No.253, Rail Bhavan, New Delhi (with 5 copies).
2. The General Secretary, National Federation of Indian Railwaymen, Room No.256-E, Rail Bhavan, New Delhi (with 35 spares).
3. All Members, Departmental Council and National Council and Secretary, Staff Side, National Council, 13-C, Ferozeshah Road, New Delhi (with 90 spares).
4. The Secretary General, Federation of Railway Officers Association, Room No. 256-A, Rail Bhavan, New Delhi (with 5 spares).
5. The Secretary General, Indian Railway Promotee Officers Association, Room No. 268, Rail Bhavan, New Delhi (with 5 spares).

for Secretary, Railway Board.

Copy to :-

PSs to MR, MSR(B), MSR(D)

PPSs to CRB, FC, MS, MM, MT, ML, ME.

PPSs to AM(S), DGRHS, DG/RPF

PSs to EDE, EDV, EDE(N), EDE(Res), EDA, EDE(IR), EDE(RRB), EDPCI&II, D(MPP), JDPC, DDE(Res), JDE(R) I&II, JDE(Rep), JDE(D&A), JDPC, JDE(P&A), JDE(L), DDE(R) I&II, DD (Code Revision), DDE(LR) I, JDE(N) II, DDE(W), DDE(N)-II, E(NG) II, E(O) III, E(GR) II, E(Rep) I, II&III, E(LR) I, E(SCT) I&II, E(MPP), SEC(E), PR Branch, E(G), E(LL), Sec (ABE), E(W)AC-III, E(P&A) I&II, Code Revision Cell.