

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Applications No 921 of 2004

Indore, this the 18th day of October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman

Hon'ble Mr. Madan Mohan, Judicial Member

Smt. Vibha Khare W/o Shri C.S.
Shrivastava, aged about 37 years,
R/o Village Nowghat, Hatta, District
Damoh.

Applicant

(By Advocate – Shri A.G. Dhande)

V E R S U S

1. The Director/Commissioner,
Navodaya Vidyalaya Samiti,
Ministry of Human Resources
Development, Education Department,
Government of India, E-3 Arera
Colony, Bhopal (MP)
2. Deputy Director,
Navodaya Vidyalaya Samiti,
Regional Office at 160 Zone-II
M.P. Nagar, Bhopal (M.P.)
3. Principal, Jawahar Navodaya
Vidyalaya, Hatta, District Damoh.

Respondents

(By Advocate – Shri O.P. Namdeo)

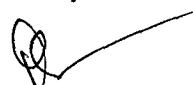
O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application, the applicant has sought the following main reliefs :-

"(2)to set aside the impugned order/letter dated 14.7.2004 (Annexure-A-18).

(3)to command the respondents to consider the case of the applicant afresh and give her appointment forthwith with due seniority from 18.10.1993 or in the alternative, her services be regularized with all monetary benefits.



2. The brief facts of the case are that the applicant was appointed as daily wager L.D.C. under the respondents department for a period of 89 days and the appointment was renewed and she worked as L.D.C. from 18.10.93 to 7.6.1996. The applicant made a request for regularizing her services. However on 7.6.2005 the respondent no.2 has dispensed her services by an oral order. Thereafter she filed a Writ Petition No. 2306/96 in the Hon'ble High Court and thereafter she filed a Contempt Petition before the Hon'ble High Court for non compliance of the order of the Hon'ble High Court. The applicant has also filed another Writ Petition No.2002/98 which was transferred in this Tribunal as TA No.19/99. The Tribunal vide order dated 25.6.2003 directed the respondents to consider the case of the applicant for educational relaxation. Thereafter, the respondents have challenged the aforesaid order of the Tribunal in the Hon'ble High Court by filing Writ Petition No.2788/03. The Hon'ble High Court has disposed of the said petition vide order dated 29.4.2004 directing the respondents to reconsider the case of the applicant for relaxation sympathetically and taking into account the fact that the applicant was allowed to work on the said post for a period of 3 years and she has possessed the MA degree with more than 50% marks. Thereafter, the applicant has submitted a representation before the respondents with a prayer to consider her case as per the observation made by the Hon'ble High Court. However, the respondents have rejected the representation of the applicant vide order dated 14.7.2004. Thereafter she filed a Contempt Petition in the Hon'ble High Court, the same was disposed of directing the applicant to file a fresh OA in the Tribunal against the order of the respondents. Hence, this OA.

3. Heard the learned counsel for the parties and carefully perused the records.

4. The learned counsel for the applicant has argued that the applicant passed MA examination in the year 1990 with second



division and she has also passed Hindi and English Typing. Therefore, she is eligible for the post of LDC in which she has worked for more than 2 years. The learned counsel for the applicant has also argued that the applicant has qualified the typing test conducted by the respondents. However, the respondents have not considered her case for relaxation and they have rejected the claim without considering her experience and higher education. The learned counsel for the applicant has further argued that the Hon'ble High Court and this Tribunal has specifically directed the respondents to consider the case of the applicant for relaxation. However the respondents have not complied with the order of the Hon'ble High Court and Tribunal and they have denied the genuine claim of the applicant vide order dated 14.7.2004. The action of the respondents is totally unjustified and illegal. Hence, this OA deserves to be allowed.

5. In reply the learned counsel for the respondents argued that in pursuance to the direction of the Hon'ble High Court, the applicant was considered for regular appointment along with other suitable candidates. Since, the applicant did not possess 50% of marks in Senior Secondary i.e. Class 12th which was an essential qualification, she could not be selected. The learned counsel for the respondents has also stated that when the relaxation was not granted to the applicant, she approached the Hon'ble High Court and thereafter this Tribunal. After passing the order of the Hon'ble High Court and this Tribunal, the respondents have reconsidered the matter and passed a reasoned and detailed order dated 14.7.2004. The learned counsel for the respondents has further stated that the relaxation as contemplated in the Rules is not for any individual but for a class or group. Even otherwise grant of relaxation for an individual in essential educational qualification would amount to amending the Rules for any particular person which would be violative of the fundamental rights of the Constitution. Hence, the action of the respondents is totally legal and justified.



6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that this Tribunal has held on 25.6.2003 in TA No.19/99 that "[T]he Director may reconsider her case to give relaxation to recommend the case to the executive committee for relaxation within a period of three months from the date of receipt of a copy of this order". We find that the Tribunal had directed the respondents that they may consider for relaxation and had not directed the respondents that they should give the relaxation to the applicant. We also find from the order dated 14.7.2004 that the matter has been considered by the Samiti while passing the said order and in which they have stated that "[T]he essential qualification prescribed for appointment on the post of LDC in the Samiti under the recruitment rules is that the candidate should have secured at least 50% marks at +2 level whereas you have secured only 48.5% marks as against essential requirement of 50% marks. Since you do not possess the essential qualification prescribed for the post of LDC your case cannot be considered for appointment to this post and relaxation in essential academic qualification will amount to amending the recruitment rules. Percentage of marks obtained by you in post graduate degree is of a little consequence and under the provisions of recruitment rules relaxation can only be granted only for a class or category of posts or persons". We also find that the applicant possessed 48.5% marks in the Higher Secondary examination whereas 50% marks is required for the post of LDC. The respondents have only discretionary power to relax the educational qualification. However, the argument advanced on behalf of the respondents that grant of relaxation for an individual in essential educational qualification would amount to amending the Rules for a particular person, would be violative of the fundamental rights of the Constitution seems to be correct.



7. Considering all the facts and circumstances of the case, we do not find any merit in OA and the same is liable to be dismissed. Accordingly, the same is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

Skm

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अवृत्ति गिरावः—
(1) राजिव, उच्च व्यायामय दाता एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/कुमा... के वारंगल
(3) प्रद्युम्नी श्री/श्रीमती/कुमा... के वारंगल
(4) बृंधपाल, रोपना, जबलपुर व्यायामीठ
सूचना एवं आवश्यक कार्यवाही के द्वारा
उप रजिस्ट्रार

Ang. Dhanade (RJD)
O. Narendra (RJD)

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14.11.05