

CENTRAL ADMINISTRATIVE TRIBUNAL. JABALPUR BENCH,

CIRCUIT CAMP AT BILASPUR

Original Application No. 477 of 2002

Quarior, this the 13th day of October, 2004

Hon'ble Mr. M.P.Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

R.P. Panday, S/o
Shri S.N. Panday,
Trained Graduate Teacher(TGT),
South Eastern Rly Mix Higher
Secondary School (English Medium),
Bilaspur(C.G.)

APPLICANT

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India,
Through General Manager,
South Eastern Railway,
Garden Reach,
Kolkata-43(W.B.).
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Kolkata(W.B)
3. Divisional Railway Manager,
South Eastern Railway,
Bilaspur Division,
Bilaspur(CG)
4. Sr. Divisional Personnel Officer,
South Eastern Railway,
Bilaspur(C.G.).
5. Smt. Pramila Gupta,
Post Graduate Teacher(Hindi),
Mixed Higher Secondary School
(English Medium) Bilaspur(CG).

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R

By M.P. Singh. Vice Chairman -


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

"(ii) Upon holding that the private respondent's promotion to applicant's cadre is bad in law, command the respondents to include the name of the applicant by considering him for TGT in English Medium School, pursuant to notification date 8.11.2000 Annexure-A-4. If necessary, revert repatriate Respondent No. 5 to her original medium where her lien is maintained. Accordingly direct the department to shift the Respondent No.5 to south Eastern Railway Higher Secondary School(Hindi Medium), Bilaspur as PGT against the vacancy which occurred on 28.2.2002;

(iii) Consequently, direct the respondents to consider and promote the applicant as PGT(Hindi English Medium School with all consequential benefits."

2. The brief facts of the case are that the applicant was initially appointed as a Primary School Teacher in the pay scale of Rs.1200-2040/-. Thereafter, he was promoted to the post of Trained Graduate Teacher(for short'TGT') in the scale of Rs.1400-2600 on adhoc basis and was posted at Mixed Higher Secondary School(for short'MHSS')(English Medium), Bilaspur. He was regularised in the post of TGT and was posted at Bilaspur vide order dated 15.6.1993. While he was working as such he was also empanelled for the post of Post Graduate Teacher(for short'PGT') Hindi in the scale of Rs.1640-2900 and was posted at MHSS, Khurda Road vide order dated 30.6.1993. But, the applicant did not carry out the promotion-cum-transfer order. He preferred his posting at Bilaspur as TGT rather to proceed to Khurda Road(Orissa) as a PGT. Since then he has been continuing as TGT at Bilaspur. The applicant has alleged that he could have been promoted to the post of PGT and posted at Bilaspur against a vacancy arose out^{of}/retirement of one Smt. S.C. Prakash with effect from 31.12.1998. According to the respondents, the post of PGT is a selection post for which selection test is held and finally the empanelled candidates fulfilling all other conditions are promoted and posted. The life of the panel exists for a period of 2 years from the date of publication of the panel. In the instant case, the applicant was empanelled for PGT on 28.6.1993 and the panel in which his name was included remained alive upto 27.6.1995. Therefore, he could not have been promoted as PGT, as a period of about 5 $\frac{1}{2}$ years had already elapsed from the date of publication of the panel for promotion to PGT.


2.1 One Smt. Pramila Gupta, a TGT in the scale of Rs.1400-2600 of MHSS, Bilaspur was empanelled for promotion to the post of PGT vide order dated 6.2.1997 and was posted at Bhilai. But Smt. Gupta did not carry out the said promotion-



cum-transfer order for which she was debarred for promotion for a period of one year i.e. up to 5.2.1998. When the period of debarment was over, Smt. Gupta appealed to the competent authority for her promotion as PGT and opted for change of media of teaching and posting at Bilaspur against a vacancy arose out of retirement of Smt. S.C.Prakash, who retired from service w.e.f. 31.12.1998 on grounds, inter alia, that her husband was working at Bilaspur. She appealed to the competent/concerned authority for her retention at Bilaspur on conjugal ground instead of transferring her to other distant place. Her appeal was examined at appropriate level in Headquarters office as per extent rules. Subsequently she was considered fit for teaching in English Medium, and was promoted to the post of PGT and posted at Bilaspur, against the earlier panel in which her name was included. According to the respondents, the approval of the competent authority for her promotion and posting against the earlier panel was accorded on 29.1.1999 i.e. within the life span of the panel and the order was issued at a later date i.e. on 21.4.1999. Since the applicant has not been considered for empanelment for the post of PGT against the vacancy caused due to retirement of Smt. S.C. Prakash, he has filed this OA.

3. Heard the learned counsel of both the parties and perused the records carefully.

4. The learned counsel for the applicant has submitted that the applicant was the only candidate for the post of PGT(Hindi) meant for Railway(English Medium) Higher Secondary school in the entire South-Eastern Railway Zone, and was not considered for such promotion when the vacancy of PGT(Hindi) in English Medium school arose on account of retirement of Smt. S.C. Prakash. On the other hand, Smt. Pramila Gupta, a TGT in Hindi Medium School was promoted and posted as PGT against the said vacancy. Therefore, the promotional prospects of the applicant have been blocked. According to the




learned counsel, the letter dated 21.4.1999(Annexure-A-2) clearly shows that the empanelment of said Smt. Pramila Gupta, TGT was for the post of PGT(Hindi Medium). According to him, Smt. Pramila Gupta was altogether in a different seniority group of Hindi Medium School, whereas the applicant was a Hindi Teacher in English Medium School. Therefore, the switching over of Smt. Gupta from the stream of Hindi Medium to English Medium school changes her cadre which is not permissible. The applicant had made a protest against the posting of Smt. Gupta as PGT by submitting his representation dated 24.5.1999 (Annexure-A-3), however, no heed was paid to his objection and protest. The learned counsel has also drawn our attention to the notification dated 8.11.2000(Annexure-A-4) for selection to the post of PGT Grade-I in the scale of Rs.6500-10500. In the said circular, the vacancies of PGT have been notified medium wise and it is also mentioned in the said circular that "Normally for a vacancy in the particular medium-wise seniority groups only those teachers who are borne in that medium-wise seniority group are eligible". It was further indicated therein that in case candidates are not available in the particular medium, then optees from other medium may cross over, but in that event, they should be placed below those teachers of the same medium in the seniority group by giving them bottom seniority. In the present case, the candidates from English Medium schools were available and, therefore, the consideration of Smt. Pramila Gupta, respondent no.5 would arise only in the event the teachers in English medium schools were not available. The learned counsel has, therefore submitted that as Smt.Pramila Gupta was working in Hindi Medium school, she could not be considered against the vacancy which arose in a different cadre of English Medium school as the candidates in English Medium school were available. The learned counsel has further contended that promotions to the post of PGT are made from among the TGTs on the basis of medium-wise school and it is only in the case of non-availability of a person in a particular medium of a

school, the person from other medium of school are considered and appointed . In this case, the applicant was available in the English Medium school and the vacancy had also arisen in the English medium school. Therefore, the respondent no.5, who was altogether in a different cadre in Hindi medium school could not have been appointed, blocking the promotional chances of the applicant.

5. On the other hand, the learned counsel for the respondents has stated that as per rules, a person from English medium school can be considered for appointment/selection as PGT in Hindi medium school and vice versa. Since the private-respondent no.5 was also selected and empanelled for the post of PGT Hindi and was transferred to Bhilai, she did not carry out the promotion. Therefore, she was debarred for promotion for a period of one year. Later on when a vacancy arose at Bilaspur and as her husband was working in Bilaspur, within the period of two years i.e. the life span of the panel dated 6.2.1997, she was considered for her appointment as PGT Hindi ^{vice} ~~vice~~ the vacancy arise on retirement of Shrimati S.C. Prakash on 31.12.1998.

6. In spite of our specific direction issued on 10.9.04, the respondents have not produced the proceedings of the selection committee, in which the private respondent no.5 was selected. However, on the basis of available records we find that Smt. Pramila Gupta was considered for a post of PGT Hindi against the vacancy arose in Hindi Medium School. We have also seen the circular submitted by the learned counsel for the respondents which stipulates that it is not permissible to consider a person for promotion/selection for a particular post from different cadre. The seniority of Hindi Medium School Teachers and English Medium School are maintained separately and it is not possible to consider a Teacher of Hindi Medium School for promotion to the post of PGT in an English Medium School and vice versa. In this case, we find that private-respondent no.5 has been selected against the post



of Hindi Medium School at Bhilai and she could, therefore, not be considered to the post of PGT Hindi against a vacancy which arose on 31.12.1998 on retirement of Smt. S.C. Prakash in the English Medium School. The vacancy which arose on 31.12.1998 was required to be notified and its selection was required to be made against that post as per rules which has not been done by the respondents and instead a person selected for a post of PGT(Hindi) in Hindi Medium School, has been appointed against the said vacancy which is not permissible under the rules and is also against the rules/instructions issued by the respondents. The respondents have quoted their rules of selection in their circular dated 8.11.2000(Annexure-A-4), which are reproduced below-

"The teachers who fulfill the requisite qualification will be called upto 3 times of the number of vacancies to be empanelled. Normally for a vacancy in the particular mediumwise seniority group, only those teachers who are borne in that medium-wise seniority group are eligible. In case the required number can be found from the applicants immediately in lower grade then the teacher from grades further below will not be called and no representations will be entertained. If requisite number of teachers are not found in the next lower grade, application from teachers in two grades below the selection grade. Rs.6500-10500 will be considered to make up three times of the number required to be called for the above selection. In case sufficient optees are not found in the next lower grade as well as in two grades below, to make up three times of the number to be empanelled teachers who may opt to the other medium would be eligible subject to their capacity to teach in the particular medium. They will be placed below to those teachers of the same medium in the seniority group. The teachers of the other medium will be called in order to their integrated seniority deciding on the length of non-fortutious service in the grade."

The above rule specifically provides that normally for a vacancy in a particular mediumwise seniority group, only those teachers who are borne in that mediumwise seniority group are eligible. In the instant case the applicant was a teacher in the English Medium School and the vacancy had occurred in that school. Therefore, the said vacancy should not have been filled up by appointing respondent no.5 who was selected for a post in Bhilai in Hindi Medium School. Therefore, the

appointment of respondent no.5 is legally not sustainable in the eye of law as the same has not been made in accordance with the rules, instructions and law and the same is liable to be dismissed. Apart from it, private-respondent was empanelled for promotion to the post of PGT vide order dated 6.2.1997 and was debarred for promotion for a period of one year i.e. up to 5.2.1998 as she did not carry out the promotion/transfer order. The vacancy at Bilaspur arose on 31.12.1998 only on retirement of Smt.S.C.Prakash. It is not explained by the respondents as to whether she was further debarred for promotion from 6.2.1998 onwards also as she did not join her duties at Bhilai. From the records (Annexure-A-2) we find that she continued to work as TGT at Bilaspur from 6.2.1998 onwards and was promoted as PGT and transferred to MHSS(English Medium), Bilaspur. She could not have been appointed to the post of PGT against a vacancy which arose almost two years after she was selected for a post of PGT for a Hindi Medium school. Moreover, the orders for her appointment as PGT in English Medium School against a vacancy of 31.12.1998 ^{were 2} ~~and the order~~ issued in April, 1999 i.e. after the life of the panel dated 6.2.1997 was over.

7. In the result, for the reasons recorded above, the O.A. is partly allowed. The appointment of respondent no.5 as PGT(Hindi) in English Medium School is quashed and set aside. The respondents are directed to fill up the said vacancy as per rules. The respondents are further directed to comply with above directions within a period of four months from the date of communication of this order.

No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman